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(Supreme Court)

THE SUPREME COURT OF INDIA.
(Civil Appellate Jurisdiction.)
Present:- *Y.V.Chandrachud,* *C.J.* and *M.P.Thakkar, J.*

*C.A.No.3358 of 1979 *27th November,1984.*

M/s.Variety Emporium .... *Appellant**
v.

V.R.M.Mohd. Ibrahim Naina ... *Respondent*

(A) Constitution of India (1950), Art.136 - Appeal by special leave - Concurrent decision of two or more Courts - Interference by Supreme Court - Practice.

In the present case three Courts have held concurrently that the respondent has proved that he requires the suit premises bona fide for his personal need. Such concurrence, undoubtedly, has relevance on the question whether the Supreme Court should exercise its jurisdiction under Art.136 of the Constitution to review a particular decision. That jurisdiction has to be exercised sparingly. But that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. The burden of showing that a concurrent decision of two or more Courts or Tribunal is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right, but the duty of the Supreme Court to remedy the injustice. *[Para 6]*

In the present case the appellant has discharged admirably the heavy onus that lay upon him to establish that the decision come to by three Courts in this case is such as cannot possibly be accepted. *[Para 7]*

(B) Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Section 10(3)(a) - Petition for eviction on the ground of bona fide requirement of landlord - Appellate Court's duty to take note of subsequent events and mould relief.

No authority is needed for the proposition that, in appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events. Thus, when an action is brought by a landlord for the eviction of a tenant on the ground of personal requirement, the landlord's need must not only be shown to exist at the date of the suit, but it must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceeding from Court to Court, if subsequent events occur which, if noticed, would non-suit the landlord, the Court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the Court, including the appellate Court. *[Para 16]*

Case referred to:-

Hasmat Rai v. Raghunath Prasad, (1981)3 S.C.C.103 : (1981)3 S.C.R.605 : A.I.R.1981 S.C.1711.

C.S.Vaidyanathan, for Appellant.
V.M.Tarkunde, Senior Advocate (*Shakeel Ahmed,* Advocate with him) for Respondent.

The Judgment of the Court was delivered by

Chandrachud, C.J.:- The respondent-landlord filed 7 petitions for ejectment against 7 different tenants. Four out of these occupied shop premises on the ground

floor and the other 3 occupied residential premises on the first floor of a building situated at Door No.14, Pursawalkam High Road, Madras. The appellant is one of the four tenants of a shop on the ground floor.

2. The case of the respondent is that he is running a wholesale business in textiles on the first floor of a building at 93, Godown Street, Madras; that it is inconvenient and uneconomical for him to carry on his business there; that he was incurring heavy losses in his wholesale business by reason of conditions peculiar to the location of his business and that, therefore, he wanted to wind up the wholesale business and start a retail business in the building which was in the occupation of his tenants.

3. The learned trial Judge decreed all the petitions and passed orders of eviction against every one of the 7 tenants. One of these, who occupied a so-called shop measuring 4' x 4' under a stairway, acquiesced in the decree of eviction passed against him. The other 3 tenants of the shop premises challenged the decrees of eviction passed against them by filing appeals before the Appellate Authority. In so far as the residential premises are concerned, 2 out of the 3 tenants on the first floor filed appeals against the eviction decrees. The third tenant, like the ground floor tenant under the stairway, acquiesced in the decree. In short, 5 out of the 7 tenants against whom decrees for eviction were passed, filed appeals while the remaining two did not.

4. The Appellate Authority dismissed all the 3 appeals of the tenants of the shop premises on the ground floor but, allowed the appeals filed by the two tenants of the residential premises on the first floor. The combined result of the proceedings in the trial Court and the first appellate Court was that the respondent succeeded in obtaining decrees for possession against all the 4 tenants on the ground floor and 1 tenant on the first floor.

5. Out of the 3 tenants on the ground floor against whom decrees for eviction were confirmed by the Appellate Authority (the fourth tenant not having appealed), only one, namely, the appellant therein, went to the High Court by way of a civil revision petition (C.R.P.No.122 of 1979). The other two tenants on the ground floor accepted the decree of eviction confirmed by the Appellate Authority. Thus, the position which obtained during the pendency of the civil revision petition before the High Court was that the respondent had succeeded, finally and conclusively, in establishing his right to recover or in recovering possession from 3 out of the 4 tenants of the shop premises on the ground floor and 1 out of the 3 tenants of the residential premises on the first floor. The High Court having dismissed the civil revision petition, the appellant has filed this appeal by special leave.

6. It cannot be overlooked that three courts have held concurrently in this case that the respondent has proved that he requires the suit premises bona fide for his personal need. Such concurrence undoubtedly, has relevance on the question whether this Court should exercise its jurisdiction under Art.136 of the Constitution to review a particular decision. That jurisdiction has to be exercised sparingly. But, that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. The burden of showing that a concurrent decision of two or more Courts or Tribunals is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of this Court to remedy the injustice. Shri Tarkunde, who appears for the respondent, argued that this may lead and, in practice, does lead to different standards being applied by different courts to find out whether a concurrent decision is patently illegal or unjust. That, in the present dispensation, is inevitable. Quantitatively, the Supreme Court has a vast jurisdiction which extends over matters as far apart as Excise to Elections and Constitution to Crimes. The Court sits in Benches and not *en banc*, as the American Supreme Court does. Indeed, even if the entire Court were to sit to hear every one of the eight-thousand matters which have been filed this year, a certain amount of individuality in the response to injustice cannot be avoided. It is a well-known fact of constitutional history, even in

countries where the whole Court sits to hear every case, that the composition of majority is not static. It changes from subject to subject though, perhaps, not from case to case. Personal responses to injustice are not esoteric. Indeed, they furnish refreshing assurance of close and careful attention which the judges give to the cases which come before them. We do not believe that the litigating public will prefer a computerised system of administration of justice only, that the Chancellor's foot must tread warily.

7. Counsel for the appellant, Shri Vaidyanathan, has discharged admirably the heavy onus which lies upon him to establish that the decision come to by three Courts in this case is such as cannot possibly be accepted. We will proceed to show immediately how, by drawing a priori conclusions, the Courts, with great respect, have denied justice to the appellant. The trial Court deluded itself into believing as proved, what remained to be proved by the production of evidence which could have been produced but was not produced. The first appellate Court decided the question of landlord's bona fide requirement by the application of a formula which confuses 'requirement' or 'need' with 'desire'. And, the High Court refused to apply its mind to a question which, if examined, could have altered the course of justice.

8. The firm called 'Artex company' of which the respondent is a partner, is in occupation of business premises situated at 93, Godown Street, Madras. The firm took those premises on a lease dated Dec.21, 1973 for a period of 21 years ending with Dec.21, 1994. Even to-day, that lease is good for another ten years. The reasons given by the respondent for seeking the eviction of the appellant and the other six tenants are these: The main gate of the Godown Street premises is opened at 9.00 a.m., and is closed at 5.00 p.m., making it impossible for him to receive his customers before 9.00 A.M., or after 5.00 P.M.; there is severe competition amongst the wholesale businessmen in the Godown Street; and, there is a great deal of traffic congestion on the Godown Street. These circumstances have enormously affected the business and since, the firm is incurring losses day by day, it wanted to wind up the wholesale business and start a retail business in the premises which are in the occupation of the tenants.

9. The appellant challenged the contention of the respondent that he was incurring losses in his wholesale business at Godown Street and called upon him to produce the balance-sheet, Income-tax returns and account-books of the firm. Instead of producing these documents which would have reflected the financial position of the wholesale business, the appellant offered the lame excuse that the balance-sheet was in the custody of his auditor who was out of station. It seems to us surprising that, instead of drawing an adverse inference against the respondent for non-production of documents which he was called upon to produce, the trial Court accepted the *ipse dixit* of the respondent that he was incurring losses in his wholesale business, wherefor it had become necessary for him to obtain possession of the suit premises in order to start a retail business. The sole or, at least, the main reason why the respondent requires the suit premises is that his present place of business is so located as to cause loss to the business. Evidence showing that the business was running into a loss was not only not produced but suppressed.

10. Having seen that the trial Court accepted the case of the respondent without an objective and careful assessment of the evidence bearing upon the so-called requirement of the landlord, we will turn to the judgment of the Appellate Authority. The learned appellate Judge says that the single circumstance that the respondent was running his business in tenanted premises was sufficient to justify the conclusion that his requirement of the suit premises was bona fide. After recording this conclusion, the learned appellate Judge proceeds to say:

"The hue and cry of the tenants in the ground floor portion of the petition-mentioned premises that they will be thrown to the street in the event of an order of eviction being passed need not at all be considered. The very fact that the respondent had filed this petition immediately after his purchase of the property in the year 1975 goes a long way to prove that his very

purpose of purchasing the premises must have been to set up his business whether wholesale or retail in the petition-mentioned premises."

11. The appellate Court went one step ahead of the respondent by making out a case for him which he himself did not think it proper to make. It was not his case that he wanted possession of the suit premises for the reason "that he was carrying on his business in tenanted premises. His case was that it had become uneconomical to run the wholesale business in the Godown Street premises and therefore he wanted to start a retail business in his own building which was in possession of the appellant and other tenants.

12. Apart from this, it is quite disparaging to describe a tenant's attempt to resist eviction by lawful means as a "hue and cry". And, it is inequitous in the extreme that any Court of law, and least of all a Rent Act tribunal which has to deal with a human problem of great magnitude, should regard it as a matter of no moment that an order of eviction will throw the tenant on the street. A judge does not have to wear a shoe in order to know where it pinches. Therefore, he does not have to face the prospect of being driven to the street in order to realise what it means. His training, legal equipment and experience of life are his tools of education and social awareness. We do not suggest that a decree of eviction can never be passed against a tenant but, whether the provisions of a law specifically require it or not, the Court has to have regard for all the aspects of the matter before it and the foreseeable consequences of the order which it proposes to pass. Finally, it is impossible to subscribe to the view of the appellate Court that the very fact that the respondent had filed the eviction petitions immediately after he purchased the property, proves that the purpose of purchasing the property was to set up a business there, "whether wholesale or retail".

13. The judgment of the High Court is in the nature of an order of summary dismissal of the revision petition. After allotting a page and three quarters to the restatement of the arguments made before it, the High Court disposed of the proceeding in the following few lines:

"I am afraid that once the authorities below have taken into account all these circumstances and have come to the conclusion that the requirement of the respondent is bona fide, it is not for this Court, as if a Court of appeal, to go into these facts again and hold against the respondent herein. Consequently, the civil revision petition fails and is dismissed."

14. The High Court is right that, sitting in revision, it could not have reappreciated the evidence in the case as if it were a court of appeal. But, in saying so, the High Court, with respect, missed the real point in the case.

15. The main contention of the appellant before the High Court was that so long as the eviction petitions were pending in the trial Court and the first appellate Court, it could ntot be predicated with certainty as to in how many cases the respondent would succeed finally. That position had crystallised after the Appellate Authority had rendered its judgment. As stated by us at the beginning of this judgment, 1 out of the 3 tenants on the first floor did not challenge the decree for eviction passed by the trial Court. The landlord had, therefore, succeeded finally against him. Out of the 4 tenants of the shop premises on the ground floor, the tenant under the stairway did not challenge the decree for eviction passed against him by the trial Court. We will, however, leave that gentleman alone, since he was in possession of an area measuring 4' x 4' only. The remaining 3 tenants on the ground floor, including the appellant, had filed appeals against the decrees of eviction but, all the three appeals were dismissed by the Appellate Authority. Two out of these 3 tenants did not challenge the decrees passed by the Appellate Authority, with the result that the respondent succeeded finally and conclusively against those 2 tenants. The position which thus emerged for the first time when the civil revision petition was being argued before the High Court was that, the landlord had succeeded finally in obtaining orders for eviction against 3 out of the 4 tenants on the ground floor and 1 out of the 3 tenants on the first floor. This position had undoubtedly brought about a change in the state of affairs which existed at the inception of the ejectment proceed-

ings and which existed partly during the pendency of the proceedings before the Appellate Authority. Basing himself on the change in the factual position which had come about after the Appellate Authority gave its decision, the appellant argued before the High Court that the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the shop premises in possession of the appellant, which, it would appear, admeasure about 308 square feet. That contention was brushed aside by the High Court with the short order extracted above.

16. No authority is needed for the proposition that, in appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events. We may, however, draw attention to a decision of this Court in *Hasmat Rai v. Raghunath Prasad, (1981)3 S.C.C.103 : A.I.R.1981 S.C.1711 : (1981)3 S.C.R.605*, the ratio of which may be stated thus:

When an action is brought by a landlord for the eviction of a tenant on the ground of personal requirement, the landlord's need must not only be shown to exist at the date of the suit, but it must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceeding from Court to Court, if subsequent events occur which, if noticed would non-suit the landlord, the Court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the Court, including the appellate Court. In such a situation, it would be incorrect to say that as a decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration subsequent events. The tenant can be precluded from so contending only when a decree or order for eviction has become final." (See pages 606-607)

Justice R.S.Pathak, who concurred with Justice D.A.Desai and Justice Venkataramiah, expressed the same view thus:

"It is well settled now that in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the requirement must continue to exist on the date when the proceeding is finally disposed of either, in appeal or revision, by the relevant authority. That position is indisputable." (See page 624).

17. The High Court having failed to consider the circumstances which had arisen before it for the first time, it becomes our duty to have regard to them. Having considered the evidence in the case, particularly the fact that the landlord has obtained decrees for possession against 3 out of the 4 tenants on the ground floor and 1 out of the 3 tenants on the first floor, we do not see any justification for evicting the appellant from the premises in his occupation. The landlord's requirement, such as it is, is more than adequately met by the eviction of those 4 tenants.

18. It is doubtful whether the respondent would have at all succeeded in any one of the 7 cases if, the trial Court had correctly appreciated the effect of suppression of the material documentary evidence by him. But, the eviction decrees passed against 6 out of the 7 tenants are now an accomplished fact and those matters, having been finally determined, cannot be reopened.

19. For these reasons, we allow this appeal and set aside the judgments of the High Court, the Appellate Authority and the trial Court. The respondent's petition for eviction of the appellant will stand dismissed. Respondent shall pay to the appellant the costs of all the three Courts, which we quantify at rupees five thousand.

V.K. *Appeal allowed.*

THE SUPREME COURT OF INDIA
(Original Civil Jurisdiction)

Present:- *V.D.Tulzapurkar, R.S.Pathak and Sabyasachi Mukharji, JJ.*
*W.P.Nos.893 and 967 of 1979 and 295 of 1980 *12th December,1984.*

M/s.S.M.Mahendru and Company etc. .... *Petitioners**
v.
State of Tamil Nadu and another ...... *Respondents*

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Section 29 - Notification No.11(2) H.O.6060/76, dated 21-11-1976 issued under exempting buildings owned by all Co-operative Societies from all provisions of the Act - Validity - If hit by Art.14 of the Constitution.

The profit element being maintained at a reasonable level by provisions of law in all types of Co-operative Societies there is every jutification for the assumption that no Co-operative Society will indulge in rack-renting or unreasonable eviction. In this view of the matter if the State Government came to the conclusion that in the case of Co-operative Societies there being no apprehension that they would indulge in either of these two evils, exemption from the provisions of T.N.Act (XVIII of 1960) should be granted in favour of buildings belonging to such Co-operative Societies it will have to be regarded as a legitimate exercise of the power conferred on it under S.29 of the Act, the same being in conformity with the guidance afforded by the preamble and provisions of the Act in that behalf. Hence, the exemption granted does not infringe Art.14 of the Constitution of India. *[Para 7]*

From the provisions of Ss.4 and 62 of the T.N.Co-operative Societies Act and R.46 of the Rules it will be clear that in the matter of distribution of profits by way of payment of dividend to members and payment of bonus to members as well as paid employees restrictions have been placed by law and the same is maintained at a reasonable level and considerable portion of the net profits is apportioned and required to be carried to various kinds of funds, like co-operative development fund, co-operative education fund, reserve fund etc. In fact it is such statutory appropriations and restrictions on payment of dividends and bonus which differentiates co-operative societies from other bodies undertaking similar activities on commercial lines and therefore the buildings belonging to such co-operative societies are substantially different from the buildings owned by private landlords. *[Para7]*

Case referred to:-

Baburao Shantaram More v. Bombay Housing Board, 1954 S.C.J.210 : (1954) S.C.R.572 : A.I.R. 1954 S.C.153.

The Judgment of the Court was delivered by

Tulzapurkar, J.:- By these three writ petitions filed under Art.32 of the Constitution the petitioners, who are tenants in a building belonging to respondent No.2 Society, have challenged the validity of the exemption granted to all buildings owned by all Co-operative Societies in the State of Tamil Nadu from all the provisions of the T.N.Act 18 of 1960 under Sec.29 thereof.

2. The facts giving rise to the aforesaid challenge lie in a narrow compass. The petitioners are tenants in different portions on the ground floor of the building bearing Door No.188, Mount Road, Madras belonging to second respondent which is an Apex Society registered under the Tamil Nadu Co-operative Societies Act, 1961. It appears that the property was purchased in 1961 by the second respondent from its previous owners M/s. Mohammed Ibrahim and Company, and soon thereafter the second respondent applied to the State Government under Sec.29 of the Act and sought exemption for it from all the provisions of the Act. But on hearing the objections raised by the petitioners and other tenants the application was rejected. Respondent No.2 thereupon made two attempts to evict the petitioners from their respective premises. The first was on the ground that the premises are required by it for its own occupation but at the end of a long drawn out litigation respondent No.2 failed to obtain posses-

sion; the second was on the ground that it required the premises for demolition and new construction and it was during the pendency of this litigation that the State Government issued its Notification No.11(2) H.C.6060/76 dated 21-11-1976, under Sec.29 of the Act whereby the State Government exempted the buildings belonging to all co-operative societies in the State of Tamil Nadu from all the provisions of the Act. On the issuance of this Notification respondent No.2 withdrew its eviction petitions preferred on the ground of demolition and new construction and served notices upon the petitioners under Sec.106 of the Transfer of Property Act terminating their tenancies and filed civil suits against them in the City Civil Court, Madras, for recovery of vacant possession of the premises in their respective occupation. The petitioners have filed their written statements and suits are awaiting trial. But since the protection available to them has been withdrawn the petitioners are facing the imminent prospect of suffering eviction decrees against them and therefore, have approached this Court by means of these writ petitions challenging the constitutional validity of the Notification in question on the ground that the same is violative of Art.14 of the Constitution and have obtained stay of further proceedings in the suits.

3. The impugned Notification dated 21st November, 1976 runs thus:

> "No.II (2) H.O.6060/76 - In exercise of the powers conferred by Sec.29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960), the Government of Tamil Nadu hereby exempts the buildings owned by all Government Undertakings including Government Companies registered under the Indian Companies Act 1956 (Central Act I of 1956), and by all the Co-operative Societies from all the provisions of the said Act."

4. As was done in the earlier case dealing with the total exemption granted in favour of all buildings belonging to public religious trusts and public charities, here also Counsel for the petitioners fairly stated that treating the buildings owned by all the Co-operative Societies in the State of Tamil Nadu as falling into one group while exercising the power under Sec.29 of the Act will have to be regarded as a rational classification based on an intelligible differentia inasmuch as Co-operative Societies while carrying on their activities in various fields do serve a great public purpose of attaining the social and economic welfare of a large section of the people belonging to the middle class and the rural class by encouraging thrift, self-help and mutual aid amongst them and by eliminating the middle man and as such do form a distinct group different from other bodies undertaking similar activities on commercial lines and as such buildings belonging to Co-operative Societies may need special or preferential treatment in some matters like registration of documents payment of stamp duty, recovery of their dues etc., at the hands of the State Government but according to Counsel the differentia on which this classification is based has no nexus with the object with which the power to grant exemption has been conferred upon the State Government under Sec.29 of the Act and since the impugned Notification does not satisfy the test of nexus the exemption granted to all such buildings cannot be sustained and will have to be regarded as discriminatory and violative of Art.14.

5. By way of elaborating the aforesaid contention Counsel for the petitioners urged that the Act was put on the statute book for the purpose of curbing the two evils of rack-renting and unreasonable eviction and that the power to grant exemption could as per the guidance afforded by the scheme and the provisions of the Act be exercised by the State Government in cases where the mischief sought to be remedied by the Act is neither prevalent nor apprehended or in cases where an inflexible application of the law is likely to result in undue hardship or in cases where the beneficial provision of the Act is likely to be or is being abused by persons for whom it is intended and according to Counsel the exemption in favour of the buildings belonging to all Co-operative Societies in the State of Tamil Nadu does not conform to such guidance. Counsel pointed

out that Rule 11 of the Rules made under the T.N.Co-operative Societies Act, 1961 specifies as many as 13 different classes of Co-operative Societies such as farming society, credit society, housing society, marketing society etc., and the impugned Notification indiscriminately and unconditionally exempts all buildings belonging to all types of Co-operative Societies with no regard to their nature or functions. Further, according to Sec.4 of the T.N.Co-operative Societies Act the very object of every Co-operative Society is the promotion of the economic interest of its members and Sec.62 of that Act provides not only for payment of dividends on shares to members, but also for payment of bonus to members and paid employees of the Society. Hence it is unrealistic to assume that Co-operative Societies are not or will not indulge in rack-renting or unreasonable eviction or will be ideal landlords whose tenants will not be in need of any statutory protection. In other words Counsel urged that there was and is no warrant of any presumption that Co-operative Societies qua landlords will not indulge in rack-renting or will not unreasonably evict tenants; in fact they would not be different from other private landlords so far as the two evils sought to be curbed by the Act are concerned and therefore Counsel urged that the exemption granted could not be said to be in conformity with the guidance afforded by the scheme and the provisions of the Act.

6. In support of the above contention Counsel relied upon a decision of this Court in *Baburao Shantaram More v. Bombay Housing Board, 1954 S.C.J.210: A.I.R.1954 S.C.153 : (1954) S.C.R.572*, where the validity of Sec.3-A of the Bombay Housing Board Act, 1951 was challenged as infringing Art.14. It was urged in that case that Sec.3-A exempted lands and buildings belonging to the Bombay Housing Board from the operation of the Bombay Rent Act, 1947 while lands and buildings belonging to numerous Co-operative Housing Societies, which were similarly situated and whose object was also to solve housing problems, were not given any exemption from the operation of the Rent Act and the result was that while tenants of the Co-operative Housing Societies were fully protected against unreasonable eviction and enhancement of rent, the tenants of the Housing Board were denied such protection and therefore, Sec.3-A was violative of Art.14. The contention was negatived on the ground that the Housing Board and the Co-operative Housing Societies incorporated under the Co-operative Societies Act were not similarly situated and in that behalf this Court observed thus (at P.154 of AIR):

> "Further, though these Co-operative Housing Societies are no doubt incorporated bodies, they nevertheless may earn profits which may be distributed amongst their members. The Board, on the other hand,is as incorporated body brought into existence for the purpose of framing housing schemes to solve the problem of acute shortage of housing in Bombay. There are no share-holders interested in the distribution of any profits. It is under the control of the Government and acts under the orders of the Government. In effect, it is a Government sponsored body not having any profit making motive. No material has been placed before us which may remotely be regarded as suggesting much less proving that Co-operative Housing Societies or their members stand similarly situated vis a vis the Board and its tenants."

Relying upon the above observations, Counsel for the petitioners submitted that this Court had recognised the position that various activities are undertaken by Co-operative Societies with the motive of earning profits and as such there was and is no warrant for treating them differently from other private landlords in the context of the two evils sought to be remedied by the Act and in this sense the exemption granted does not satisfy the test of nexus and therefore, the same infringes Art.14.

7. The above contention so presented, though seemingly plausible, will, on deeper scrutiny, be found to be without substance and we shall presently indicate our reasons for saying so. It is true that under S.4 of the Tamil Nadu Co-operative Societies Act the very object of every co-operative society registered thereunder is the promotion of economic interests of its members and S.62 of the Act provides for payment of dividends on shares to its members as also for payment of bonus to its members and paid employees. But, these aspects

of a co-operative society do not mean that it could be likened to any other body undertaking similar activities on commercial lines and to do so would be to miss the very basis on which the co-operative movement was launched and propagated and has been making progress in the country during the last several decades. Indisputably, co-operative societies which carry on their activities in various fields do so for the purpose of attaining the social and economic welfare of a large section of the people belonging to the middle-class and the rural class by encouraging thrift, self-help and mutual aid amongst them, especially by eliminating the middle-man. But the object of promoting the economic interests of the members has to be achieved by following co-operative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies where sky is the limit so far as their desire to earn profits is concerned. Sections 4 and 62 of the T.N.Co-operative Societies Act and Rule 46 of the Rules made under that Act bring out this aspect of the matter very eloquently. Section 4 itself states that a society, which has as its object the *promotion of economic interests of its members in accordance with co-operative principles* may, subject to the provisions of the Act, be registered thereunder. In other words, the promotion of economic interests of the members has to be achieved in accordance with co-operative principles and the realisation thereof has been made subject to the provisions of the Act. Section 62 which deals with disposal of net profits puts restrictions on the disbursement of such profits and it runs as follows:

"62. Disposal of net profits - (1)(a) A registered society shall out of its net profits as declared by the Registrar for the purposes of this Act in respect of any co-operative year contribute such amount not exceeding, --

(i) five per cent of the net profits to the co-operative development fund; and

(ii) two per cent of the net profits to the co-operative education fund, as may be specified in the Rules.

(b) Such contribution shall be made within such time and in such manner as may be prescribed.

(2) The balance of the net profits so declared shall be appropriated--

firstly, for being credited to a reserve fund, the amount so credited being not less than twenty per cent, but not exceeding thirty per cent, of the net profits;

secondly, towards contribution to such other funds and at such rates as may be specified in the Rules;

thirdly, towards payment of dividends on shares to members at such rate as may be specified in the Rules;

fourthly, towards payment of bonus to members and paid employees of the registered society at such rate and subject to such conditions as may be specified in the Rules;

fifthly, towards contribution to such other funds and such rates as may be specified in the by-laws;

sixthly, towards contribution to the common good fund at such rate not exceeding ten per cent of the net profits as may be specified in the Rules; and

seventhly, the remainder, if any, of the net profits being credited to the reserve fund."

Rule 46 prescribes the limits on payment of dividends on shares to its members as also on payment of bonus to its members and paid employees. Sub-Rule (3) of Rule 46 says that the payment of dividends on shares to members by a Society shall not exceed 6 per cent per annum on the paid up value of each share; provided that the Government may by special or general order permit any society or class of Societies to pay dividend at the rate exceeding 6 per cent. Similarly, under Sub-Rule (4) and (5) restrictions have been placed on payment of bonus to members and to paid employees. In view of these provisions it will appear clear that in the matter of distribution of profits by way of payment of dividend to members and payment of bonus to members as well as paid employees restrictions have been placed by law and the same is maintained at a reasonable level and considerable portion of the net profits is apportioned and required to be carried to various kind of funds, like co-operative development fund, co-operative education fund, reserve fund etc. In fact it is such statutory appropriations and restrictions on payment of dividends and bonus which differentiate co-operative societies from other bodies undertaking similar activities on commercial lines and, therefore, the buildings belonging to such

co-operative societies are substantially different from the buildings owned by private landlords. Further, it has to be appreciated that these statutory provisions are applicable to all types of co-operative societies specified in Rule 11 whatever be their nature or functions. The profit element being maintained at a reasonable level by provisions of law in all types of co-operative societies there is every justification for the assumption that no co-operative society will indulge in rack-renting or unreasonable eviction. In this view of the matter if the State Government came to the conclusion that in the case of co-operative societies there being no apprehension that they would indulge in either of these two evils exemption from the provisions of the T.N.Act No.18 of 1960, should be granted in favour of buildings belonging to such co-operative societies it will have to be regarded as a legitimate exercise of the power conferred on it under S.29 of the Act, the same being in conformity with the guidance afforded by the preamble and provisions of the Act in that behalf.

8. Besides, on the factual side of the issue it has been specifically averred in the counter affidavit filed on behalf of the State Government that it duly took note of the fact that all types of co-operative societies functioning in Madras City and at several centres throughout the State as a class were engaged in various kinds of activities promoting social welfare, rural-development and economic good by providing employment to lacs of people and were doing excellent work by way of implementing one of the Directive Principles of State Policy embodied in Art.43 of the Constitution, that several complaints were received from these co-operative societies that they were facing problems arising out of a literal application of the T.N.Act 18 of 1960, particularly in the matter of securing accommodation in their own buildings for carrying on their activities and that they got involved in long drawn-out litigations in that behalf and requesting for an exemption from the provisions of the Act so that they could be relieved of the hardships from which they were suffering; it has been further averred that the Government also took note of the fact that it was not the business activity of any co-operative society including even a co-operative housing society to purchase buildings for the purpose of letting them out and earning income therefrom and as such there was no apprehension of indulging in rack-renting on their behalf and that on a consideration of all the relevant factors the Government was satisfied that the protection given to the tenants of such buildings, if withdrawn, would not result in rack-renting or unreasonable eviction and that the granting of exemption to them was necessary to relieve them of great hardship. It may be stated that all these averments have gone unchallenged and in our view the facts and circumstances put forward by the State Government clearly show that the differentia on the basis of which the classification was made had a clear nexus with the object with which the power to grant exemption has been conferred upon the State and therefore the impugned Notification will have to be regarded as valid.

9. In regard to respondent No.2 being the Apex Society herein, the additional factors taken into consideration were that out of its total share capital of 13-78 crores the State Government's contribution was to the tune of 12-81 crores, that the Government had guaranteed the loans borrowed by it for its working capital, that as the apex body it had membership of about 1488 primary societies (Handloom Weavers Co-operative Societies) and that it had 34 branches and two godowns in Madras and was required to pay for its rented premises rent at the rate of Rs.2.50 per square foot while the tenants of their own building were paying rent at the rate of 20 paise per square foot; respondent No.2 society was also involved in a long drawn-out litigation under the provisions of the T.N.Act 18 of 1960. In other words, respondent No.2 society was a glaring instance of undue hardship being suffered by a co-operative society as a result of the literal application of the Act. We are sure that a large number of similar instances must have prompted the State Government to issue the impugned Notification which as we have said above will

have to be regarded a legitimate exercise of power conferred on the State Government under Sec.29 of the Act.

10. Counsel has of course placed strong reliance upon the observations made by this Court in *Baburao Shantaram's case 1954 S.C.J.210 : A.I.R. 1954 S.C.153, (supra)* which have been quoted above in support of his contention but in our view neither the ratio nor the observations are of any avail to the petitioners. It will be clear at once that the decision in question is no authority for the proposition that exemption from the provisions of any rent-control enactment cannot be granted in favour of the buildings owned by co-operative societies. The case was concerned with the constitutional validity of sec.3-A of the Bombay Housing Board Act, 1951 whereunder exemption had been granted to lands and buildings belonging to the Bombay Housing Board from the operation of the Bombay Rent Act, 1947 and its validity was upheld by this Court. One of the contentions urged before the Court was that buildings belonging to Co-operative Housing Societies in Bombay were similarly situated as the buildings belonging to the Housing Board inasmuch as the object served by Co-operative Housing Societies and the Housing Board was the same namely, solving the housing problems of the city of Bombay and even so, though the tenants of Co-operative Housing Societies were fully protected against unreasonable eviction and enhancement of rent, the tenants of Housing Board were denied such protection and therefore sec.3-A was discriminatory and this contention was negatived by the Court by observing that the Co-operative Housing Societies and, their members were not similarly situated vis-a-vis the Board and its tenants and while pointing out the difference the Court stated that while Co-operative Housing Societies may earn profits distributable among its members there was no question of the Housing Board making profits. The Court was not concerned with the question as to whether a similar exemption if granted to buildings belonging to co-operative societies would be valid or not. The difference pointed by this Court was sufficient to refute the charge of discrimination levelled against the particular piece of legislation (sec.3-A of the Bombay Housing Board Act 1951) but it will be fallacious to rely upon this difference for the purpose of striking down the exemption granted in favour of buildings of co-operative societies under another enactment if such exemption is otherwise justified on the facts and circumstances obtaining in regard to such buildings. In fact as explained earlier the co-operative principles which govern the functioning of these co-operative societies put a curb on their profit motive and as pointed there are statutory provisions which maintain their profit element at reasonable level which warrant the assumption that co-operative societies would not indulge in rack-renting or unreasonable eviction and it was in the light of this position as also after careful study of all relevant factors obtaining in their case the State Government was satisfied that the grant of total exemption in favour of the buildings of all co-operative societies functioning in the entire State was necessary. The observations relied upon cannot therefore support the petitioners' contention.

11. In the result, the writ petitions are dismissed. Interim orders, if any are vacated. There will be no order as to costs.

V.K. .... *Petitions dismissed.*

THE SUPREME COURT OF INDIA
(Original & Civil Appeallate Jurisdiction)

Present:- *V.D.Tulzapurkar, R.S.Pathak and Sabyasachi Mukharji, JJ.*

*W.P.Nos.4433, 4642-57, 1978. 337-339, 757-758, 943, 281, 291 and 1351 of 1979, 4103 and 6271 of 1980, 731 and 1943 of 1981, 8274 and 9879 of 1983 and C.A. Nos.3108-3109 of 1981 with W.P.Nos.7941 and 7883 of 1981 *12th December, 1984.*

S.Kandaswamy Chettiar ... *Petitioner**
v.
State of Tamil Nadu and another.. *Respondent*

(A) Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), S.29 - Validity - Does not suffer from the

Vice of excessive delegation - Not hit by Art.14 of the Constitution of India. (conceded in view of decision of Supreme Court in A.I.R.1961 S.C.1731)

(B) Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), S.29- Notification under exempting all buildings owned by Hindu, Christian and Muslim religious public trusts and public charitable trusts from all provisions of the Act - Validity - If hit by Art.14 of the Constitution of India.

G.O.Ms.No.2000, Home, dated 16-8-1976, No.11(2)/HO/4520/76 issued under S.29 of the Tamil Nadu Act XVIII of 1960, exempting all buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act is valid and does not offend Art.14 of the Constitution of India.

It cannot be disputed that public religious and charitable endowments or trusts constitute a well recognised distinct group inasmuch as they do not only serve purposes but the disbursement of their income is governed by the object with which they are created and buildings belonging to such public religious and charitable endowments or trusts clearly fall into a distinct class different from buildings owned by private landlords and as such their classification into one group done by the State Government must be regarded as having been based on intelligible differentia. The said classification has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government under S.29 of the Act. *[Paras9,11]*

It is obvious that if the trustees of the public religious trusts and public charities are to be given freedom to charge the normal market rent then to make that freedom effective it will be necessary to arm the trustees with the right to evict the tenants for non-payment of such market rent. The State Government on material before it came to the conclusion that the fair rent fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from their tenants reasonable market rent and if that be so non eviction when reasonable market rent is not paid would be unreasonable and if the market rent is paid by the tenants no trustee is going to evict them. It is therefore, clear that granting total exemption cannot be regarded as excessive or unwarranted. *[Para14]*

Apart from this, it is also conceivable that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government mayhave feltthat the trustees of such buildings should be able to effect evictions without being required to fulfil other onerous conditions which must be complied with by private landlords when they seek evictions for such purposes. Therefore, the total exemption granted to such buildings is perfectly justified. *[Para15]*

The manner in which exemption from rent control provisions should be granted. whether it could be partial or total and, if so, on what terms and conditions would be matters for each State Government to decide in the light of the scheme and provisions of the concerned enactment and the facts and circumstances touching the classification made. And if the State of Tamil Nadu has thought fit to grant the exemption in a particular manner it will be difficult to find fault with it if the exemption so granted is not illegal or unconstitutional. *[Para16]*

Cases referred to:-

P.J.Irani v. State of Madras, (1962)1 M.L.J.(S.C.)92 : (1962)1 An W.R.(S.C.)92: (1962)1 S.C.J.194 : (1962)2 S.C.R.169 : A.I.R.1961 S.C.1731. State of M.P. v. Kanhaiyalal, (1970) M.P.L.J.973. Gorieb v. Fox, (1926)71 Law Ed.1228. State of Rajasthan v. Mukanchand, (1964)2 S.C.J.586 : (1964)6 S.C.R.903 : A.I.R.1964 S.C.1633.

The Judgment of the Court was delivered by

Tulzapurkar, J.:- In these writ petitions and civil appeals by special leave the petitioners and appellants, who are tenants of several buildings belonging to the Hindu, Christian and Muslim religious

public trusts as also to public charitabele trusts in the State of Tamil Nadu, have challenged the legality and/or validity of the total exemption granted to all such buildings from all the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960) (for short 'the Act') in exercise of the powers conferred upon the State Govt. under S.29 of the Act.

2. Section 29 of the Act runs thus:

> "29. Exemptions - Notwithstanding anything contained in this Act, the Government may, subject to such condition as they deem fit, by notification, exempt any building or class of buildings from all or any of the provisions of this Act."

It appears that initially by G.O.Ms.No.1998 (Home) dated 12th August, 1974, the State Government had, in exercise of its powers under S.29 exempted all the buildings owned by the Hindu, Christian and Muslim religious trusts and charitable institutions from all the provisions of the Act; in other words the exemption was available to buildings of private religious trusts as also private charitable trusts. But later on by a fresh G.O.Ms.No. 2000 (Home) dated 16th August, 1976, the State Government, in supersession of the earlier Notification dated 12th August, 1974, confined the exemption to all buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts. The relevant Notification which is being impugned herein runs thus:

> "G.O.Ms.No.2000, Home, 16th August, 1976 No.11 (2)/HO/4520/76. - In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960), and in supersession of the Home Department Notification No.11(2)/HO/3811/74, dated the 12th August, 1974, published at page 444 of Part II section 2 of the Tamil Nadu Government Gazette, dated the 12th August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and publi charitable trusts from all the provisions of the said Act."

3. The tenants have challenged the aforesaid Notification granting total exemption to all buildings belonging to the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the Act on three grounds (a) that S.29 of the Act suffers from the vice of excessive delegation of legislative powers inasmuch as it vests in the State Government unguided and uncontrolled discretion in the matter of granting exemptions and is, therefore, violative of Art.14 of the Constitution, (b) that the Notification dated 16th August, 1976 deprives the tenants of all such buildings (buildings belonging to Hindu, Christian and Muslim religious public trusts and public charitable trusts) of the equal protection of the beneficial provisions of the Act which is available to the tenants of other buildings and as such the same is discriminatory offending against the equal protection clause of Art.14 and (c) that in any event the total exemption from all the provisions of the Act granted to such buildings, where partial exemption would have sufficed, is excessive, unwarranted and unsupportable.

4. On the other hand, the State Govt., and the respondent landlords have refuted all the grounds on which the exemption has been challenged. It is denied that unguided and uncontrolled discretion has been conferred upon the State Govt., by S.29 of the Act and it is contended that enough guidance is afforded by the Preamble and the operative provisions of the Act for the exercise of the discretionary power vested in the State Govt. It is pointed out that in *P.J.Irani v. State of Madras, (1962)1 M.L.J.(S.C.)92 : (1962)1 An W.R.(S.C.)92 : (1962)1 S.C.J.194 : A.I.R. 1961 S.C.1731 : (1962)2 S.C.R.169,* an identical provision contained in the earlier enactments, namely, the Madras Buildings (Lease and Rent Control) Act, 1949 was upheld in the context of Art.14 of the Constitution by this Court on the basis that the Preamble and the operative provisions of that Act gave sufficient guidance for the exercise of the discretionary power vested in the State Govt., namely, that the said power was to be exercised in cases where the protection given by the Act caused great hardship to the landlord or was the subject of abuse by the tenant; and it is urged that similar guidance is afforded by the

Preamble and the operative provisions of the instant Act and S.29 cannot be said to be violative of Art.14. The respondents have further contended that even the point regarding the constitutional validity of granting exemption to buildings belonging to charities, religious or secular in the context of the equal protection clause of Art.14 could be said to have been concluded against the tenants of such buildings by the observations of this Court in *P.J.Irabni's case (supra), (1962)1 M.L.J.(S.C.) 92 : (1962)1 An W.R. (S.C.)92 : (1962)1 S.C.J.194 : A.I.R.1961 S.C.1731 : (1962)2 S.C.R.169;* it is pointed out that though in that case this Court was dealing with a Notification granting exemption in favour of a particular individual building, the Court has made observations which clearly indicate that where it is a case of granting exemption in favour of a class of buildings all that is required is that the classification must be based on rational grounds, i.e., grounds germane to carry out the policy or the purpose of the Act and by way of illustration the Court has in terms stated that if such exemption were to be granted in favour of all buildings belonging to charities, religious or secular, such classification would be reasonable and proper, being based on intelligible differentia having nexus to the object sought to be achieved by the exercise of power of exemption. Even otherwise, the State Govt. in their counter-affidavit dated 10th February, 1981 and supplementary counter-affidavit dated 24th September, 1983 have furnished material on the basis of which it has sought to justify the said exemption and it has been urged that the same conforms to and falls within the guidelines indicated in that decision governing the exercise of the power. The respondents have further sought to justify the grant of total exemption mainly on the basis that the freedom (right) to recover the reasonable market rent would be ineffective without the freedom to evict the tenant.

5. As regards the attack directed against S.29 of the Act itself we would like to observe at the outset that though the challenge to the section under Art.14 has been made in the petitions and the appeals Counsel appearing for the petitioners and the appellants fairly stated before us, and in our view rightly, that in view of the decision of the Constitution Bench of this Court in *P.J.Irani's case, (1962)1 S.C.J.194 (supra)*, dealing with an identical provision contained in the earlier Madras enactment (Madras Act XXV of 1949), the challenge cannot be sustained. Section 13 of the Madras Act XXV of 1949 with which this Court was concerned in that case ran thus:

> "Notwithstanding anything contained in this Act the State Government may by a notification in the Fort St. George Gazette exempt any building or class of buildings from all or any of the provisions of this Act."

This Court upheld the constitutional validity of that provision in the context of the challenge thereto under Art.14 on the basis that sufficient guidance was afforded by the Preamble and the operative provisions of the Act for the exercise of the discretionary power vested in the Government in the matter of granting exemptions to a building or class of buildings from all or any of the provisions of the Act. It may be stated that following the said decision this Court in the case of *State of Madhya Pradesh v. Kanhaiyalal, (1970) M.P.L.J.973*, did not find any infirmity in S.3(2) of the Madhya Pradesh Accommodation Control Act 1961 (Act 41 of 1961) which ran thus:

> "The Government may, by notification exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home."

The challenge to S.29 of the instant Act, which was not pressed, has therefore to be rejected.

6. Even so, since the Notification dated 16th August, 1976 issued under S.29 has been challenged the guidance afforded by the Preamble and the operative provisions of the Act will have a bearing on the question whether this particular exercise of the power conforms to such guidance or not and, therefore, it will be useful to advert briefly to the guidance so afforded. At the outset we would like to point out that the rationale behind

the conferral of such power to grant exemptions or to make exceptions has been very succinctly elucidated by the American Supreme Court in the leading of *Gorieb v. Fox (1926) 71 Law Ed. 1228 P.1230.* In that case the Court was concerned with an Ordinance which related to the establishment of a building line on public streets but it contained a reservation of power in the City Council to make exceptions and permit the erection of buildings closer to the street. It was contended that this reservation rendered the Ordinance invalid as denying the equal protection of the laws. Negativing the contention Sutherland, J., speaking for the Court, observed thus:

> "The proviso under which the Council acted also is attacked as violating the equal protection clause on the ground that such proviso enables the Council unfairly to discriminate between lot owners by fixing unequal distances from the street for the erection of buildings of the same character under like circumstances... The proviso evidently proceeds upon the consideration that an inflexible application of the Ordinance may under some circumstances result in unnecessary hardship. In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating in advance and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need exceptions may be made without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present Ordinance to deal in a special manner with such exceptional cases is unassailable on constitutional grounds."

In our view the same rationale must apply to the conferral of such power on the State Government to grant exemptions or to make exceptions even in cases of beneficial legislations like the present enactment. In the matter of beneficial legislations also there are bound to be cases in which an inflexible application of the provisions of the enactment may result in unnecessary and undue hardship not contemplated by the legislature. Obviously, the power to grant exemptions under S.29 of the Act has been conferred not for making any discrimination between tenants and tenants but to avoid undue hardship or abuse of the beneficial provisions that may result from uniform application of such provisions to cases which deserve different treatment. Of course, as observed by this Court in *P.J.Irani's case (1962)1 S.C.J.194 (supra),* the power has to be exercised in accordance with the policy and object of the enactment gatherable from the Preamble as well as its operative provisions or as said in the American decision without subverting the general purposes of the enactment.

7. As the Preamble of the instant Act shows the three purposes to achieve which it has been enacted are the same as those under the earlier enactment the Madras Act XXV of 1949, namely, (1) the regulation of letting of residential and non-residential buildings, (2) the control of rents of such buildings, and (3) the prevention of unreasonable eviction of tenants from such buildings, except that the enactment is of a comprehensive nature by way of amending and consolidating the rent control law obtaining in the State till then. Unquestionably it is a piece of beneficial legislation intended to remedy the two evils of rack-renting (exaction of exorbitant rents) and unreasonable eviction generated by a large scale of influx of population to big cities and urban areas in the post Second World War period creating acute shortage of accommodation in such areas and the enactment avowedly protects the rights of tenants in occupation of buildings in such areas from being charged unreasonable rents and from being unreasonably evicted therefrom; it further protects their possession even after the determination of their contractual tenancies by enlarging the definition of a 'tenant' so as to include persons who have held over after such determination. Sections 3 and 3-A deal with the regulation of letting while Ss.4 to 8 effectuate the objective of controlling the rents and Ss.10 and 14 to 16 confine eviction of a tenant to stated grounds subject to certain terms, qualifications and/or reservations thereby preventing unreasonable eviction. In other words a landlord's freedom of contract to charge even the

freedom of contract to charge even the market rent (if it is in excess of 'fair rent' as defined) and his freedom to evict a tenant on several grounds available to him either under his lease-deed or the Transfer of Property Act have been curtailed to a large and substantial extent. At the same time the enactment contains other significant provisions which indicate that the legislature itself felt that there might be areas and cases where the two evils were neither prevalent nor apprehended and as such the landlord's freedom need not be curtailed at all, as also cases where attenuated freedom could be allowed to the landlord and limited protection be extended to the tenant. For instance, under S.1(2)(a)(i) the Act itself does not apply to the entire State, but only to the city of Madras, the city of Madurai and to all Municipalities, (i.e.Municipal areas) which shows that non-urban areas or rural areas are excluded from the operation of the Act, presumably because in such areas the evils of rack-renting and unreasonable eviction do not obtain; and under the proviso thereto power has been reserved to the Government to withdraw the application of the Act to any municipal areas or to the city of Madras or to the city of Madurai from such date as may be mentioned in the notification as also to reintroduce the Act in such areas where it has ceased to apply by reason of the notification issued under the proviso; similarly, S.1(2)(c) confers powers on the Government to apply all or any of the provisions of the Act by notification to any other area in the State to which it has not already been made applicable by the Act itself and to cancel or modify any such notification. Again by the proviso to S.10(1) the restrictions imposed by Ss.10 and 14 to 16 (which enumerate the grounds and the circumstances under the Act) have been made inapplicable to tenants in buildings of which the landlord is the Government. Similarly, under S.10(3)(b) a much wider latitude to evict a tenant is afforded to landlords of religious, charitable, educational or other public institutions if possession is required for the purposes of such institutions, inasmuch as unlike in the cases falling under S.10(3)(a)(i), (ii) and (iii), there is no insistance that such landlords should not be occupying any other building of his own in the city, town or village concerned. In other words, the legislature itself has made a rational classification of buildings belonging to Government and buildings belonging to religious, charitable, educational and other public institutions and the different treatment accorded to such buildings obviously proceeds on the well-founded assumption that the Government as well as the landlords of such buildings are not expected to and would not indulge in rack-renting on unreasonable eviction. These and similar other provisions crystallize the policy and purposes of the Act and furnish the requisite guidance which can legitimately govern the exercise of power conferred on the State Government under S.29 of the Act. The guidance thus afforded may illustratively be indicated by stating that the power to grant exemptions or make exceptions could be legitimately exercised by the State Government in areas or cases where the mischief sought to be remedied by the Act is neither prevalent nor apprehended as also in cases (individual or class of cases) where a uniform or inflexible application of the law is likely to result in unnecessary or undue hardship (here to landlords) or in cases where the beneficial provision is likely to be or is being abused by persons for whom it is intended (here the tenants). The question is whether in issuing the Notification dated 16th August, 1976 the State Government has exercised the power in conformity with such guidance and the same is valid as not offending Art. 14 of the Constitution.

8. We have already stated that the respondents have contended that the question of constitutional validity of granting exemption to buildings belonging to charities, religious or secular from rent control legilsation as offending the equal protection clause of Art.14 has been concluded by the observations made by this Court in *P.J.Irani's case, (1962)1 M.L.J.(S.C.)92: (1962)1 An W.R.(S.C.)92 : (1962)1 S.C.J.194: (1962)2 S.C.R.169 : A.I.R.1961 S.C.1731 (supra)* while Counsel for the petitioners and the appellants on the other hand have urged that it is not; according to Counsel for the petitioners and the appel-

lants all that the observations made by this Court in that case decide is that the classification of buildings belonging to Hindu, Christian and Muslim religious public trusts as also to public charitable trusts could be regarded as a reasonable classification based on intelligible differentia but that test of nexus which is also required to be satisfied for purposes of Art.14 has not been pronounced upon by this Court and this aspect is still open to argument. We shall proceed on the basis that the question is res integra and consider whether the respondents particularly the State Government have furnished proper material on the basis of which the exemption granted can be justified.

9. It cannot be disputed that public religious and charitable endowments or trusts constitute a well recognised distinct group inasmuch as they not only serve public purposes but the disbursement of their income is governed by the objects with which they are created and buildings belonging to such public religious and charitable endowments or trusts clearly fall into a distinct class different from buildings owned by private landlords and as such their classification into one group done by the State Government while issuing the impugned notification must be regarded as having been based on an intelligible differentia. Counsel for the petitioners and the appellants also fairly conceded that such classification would be rational one, more so in view of the observations made by this Court in that behalf in *P.J.Irani's case, (1962)1 S.c.J.194 (supra)*. The question is whether the said classification has any nexus with the object with which the power to grant exemptions has been conferred upon the State Government under S.29 of the Act. On this aspect of the matter before we go to the material furnished by the State Government on the basis of which such nexus is sought to be established it will be useful to refer to certain observations made by this Court in the case of *State of Madhya Pradesh v., Kanhaiya Lal, (1970) M.P.L.J.973 (supra)*, which afford a clear indication as to what kind of material would go to establish such nexus. The facts of that case were those. Respondent No.4 in that case was a public trust registered under the Madhya Pradesh Public Trusts Act and it owned a house property, one portion whereof was occupied by girls school, the rest being let out to tenants. Since the rents issuing from the property were wholly utilised for the purposes of the school respondent No.4 became entitled to get exemption from the provisions of the M.P.Accommodation Control Act under S.3(2) thereof for that house property. On an application made in that behalf by respondent No.4 the State Government granted the exemption by issuing a notification under that provision. The notification was challenged on two grounds (i) that S.3(2) was void on the ground of the excessive delegation of Legislative powers to the State Government; (ii) that the notification itself was discriminatory as the grant of exemption was not germane to the policy of the Act. The High Court upheld the validity of S.3(2) but struck down the notification as being discriminatory. This Court confirmed the High Court's view on both the points. While holding the notification bad on the ground that the exemption granted was not germane to the policy of the Act this Court observed thus:

"In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption the State applied merely a rule of thumb and issued the notification on the basis of the assertion by the trust that the entire rental income from the property was being applied to meet the expenses of the trust. Such a statement only allows an institution to apply for exemption. *It was not the case of the trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income according to them was very low compared to prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the trust. If grounds like these or other relevant grounds had been alleged it would have been open to the State Government to consider the same and pass an order thereon.* In our view the State Government did not apply its mind which it was required

to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purposes of the Act to support the claim for exemption." (Emphasis supplied)

The above observations clearly indicate what kind of material the State Government is required to take into consideration which would justify the grant of an exemption in favour of a particular building or class of buildings.

10. Coming to the material furnished by the State Government on the basis of which the impugned exemption is sought to be justified it may be stated that in paragraph 4 of its counter affidavit dated 10-2-1981 Shri H.J.Ramachandran, Joint Secretary, Home Department, has stated:

"The prime object behind the grant of exemption to the buildings belonging to religious institutions is to enable the institutions to get enhanced income by increasing their rents. The buildings were endowed to the public religious and charitable trusts for carrying out certain religious or charitable purposes. With the escalation of prices, the religious and charitable trusts are not in a position to carry out the endowment, if the income of the property is not increased suitably and this nullifies the specific purpose of the endowment."

In para 13 the deponent has further stated:

"As stated already, numerous representations were made to the Government about the plight of the temples and the public charities like poor feeding, etc., and the ridiculous position which is prevailing, and the Government on a consideration of all the aspects of the matter was fully satisfied that the tenants are fully exploiting the situation and the fixation of a fair rent under the Rent Control Act is no criterion at all and that it would cause immense injustice and would be highly oppressive so far as temples and religious endowments and public charities are concerned. It is only in the context of such a serious predicament and critical situation that the Government intervened and issued the notification under S.29 of the Act to relieve the hardship and injustice."

It has also been pointed out that the procedure and machinery indicated in S.4 of the Act and the concerned Rules for fixing fair rent only yields, on the total cost of the building together with the market value of the site, a gross return of 9 per cent for residential buildings and 12 per cent for non-residential buildings which is very low as compared to the bank rate of interest and grossly inadequate when compared to the reasonable rents at the market rate obtaining in the locality or the neighbourhood (i.e. rent which willing landlord will charge to a willing tenant) and it was a case of the tenants of all such buildings exploiting the situation arising from the beneficial provisions of the Act. In the supplementary counter affidavit dated the 24th September, 1983, Shri N.Srinivasan, Deputy Secretary, Home Department, has categorically asserted that "in all these cases the Government was satisfied that the rent paid by the tenants was very low, meagre and that the provisions of fixation of fair rent under the Act would not meet the ends of justice and the situation will still continue in which the tenant will be exploiting the situation and the helplessness of the public religious trusts and charitabele institutions" and that, therefore, the Government felt that it was necessary to withdraw the protection given under the Act to the tenants of such buildings.

11. It may be stated that no rejoinder affidavit has been filed on behalf of the writ petitioners or the appellants and as such the aforesaid material furnished by the two counter affidavits and the averments made therein have gone unchallenged. In our view, the aforesaid material clearly shows that buildings belonging to such public religious and charitable endowments or trusts clearly fell into a class where undue hardship and injustice resulting to them from the uniform application of the beneficial provisions of the Act needed to be relieved and the exemption granted will have to be regarded as being germane to the policy and purposes of the Act. In other words the classification made has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government under S.29 of the Act.

12. It may be stated that counsel for the petitioners and the appellants during the course of the hearing placed reliance upon a decision of this Court in *State of Rajasthan v. Mukanchand, (1964)2 S.C.J.586: (1964)6 S.C.R.903 : A.I.R.1964 S.C.1633,*

where the impugned part of S.2(e) of the Jagirdar's Debt Reduction Act (Rajasthan Act 9 of 1937) was held to be violative of Article 14 on the ground that the test of nexus between the classification made and the object sought to be achieved by the statute in question had not been satisfied. The ratio of the decision was that Jagirdars having been deprived of their lands were entitled to the benefits of the Act providing for reduction of debts and it made no difference whether the debts were owed to the Government or local authority or other bodies mentioned in the impugned part of S.2(e) of the Act and such debts due to the Government, local authority and other bodies could not be excluded while granting the benefit of reduction of debts. The ratio, in our view, is clearly inapplicable to the facts of the instant case inasmuch as we have come to the conclusion that the classification of buildings made in the impugned notification has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government.

13. It was next contended that if the main object of granting exemption to buildings belonging to public religious institutions or public charities was to enable these institutions to augment their income by increasing rentals of their buildings such object could have been achieved by granting exemption from those provisions of the Act which deal with the controlling of rents (Ss.4 to 8 and the Rules made in that behalf) but a total exemption granted to them from all the provisions of the Act particularly those which prevent unreasonable eviction of tenants must be regarded as excessive and unwarranted. And in this behalf counsel for the petitioners and the appellants referred to a Saurashtra Notification No.AB/15(17)/54-55 dated the 27th December, 1954 issued by the State Government under S.4(3) of the Saurashtra Rent Control Act, 1954 whereunder partial exemption from charging only the standard rent subject to certain conditions was granted to buildings belonging to public trusts for religious and charitable purposes. It was pointed out that the Notification provided that the provisions of the Act except provisions in Ss.23, 24 and 25 shall not, subject to conditions and terms specified in the schedule thereto apply to such buildings and term No.I in schedule A stated that "no tenant of such premises to whom the same has been leased on or before 30th December, 1948 shall be evicted provided such tenant agrees to increase the monthly rent paid by him immediately before the said date by 50% and does not allow, except for valid reasons the rent amount due at any time to run in arrears for more than two consecutive months." In other words the Saurashtra Notification was relied upon as an illustration where partial exemption from the provisions of the Rent Control enactment subject to terms and conditions could be granted. Thus counsel urged that similarly in the instant case the State Government of Tamil Nadu could have given partial exemption to buildings belonging to public religious institutions and public charities only in the matter of 'fair rent' and need not have taken away the protection available to the tenants under the provisions which prevented unreasonable eviction.

14. In our view there is no substance in the contention. It cannot be disputed that the two objectives of the enactment, namely, to control rents and to prevent unreasonable eviction are interrelated and the provisions which subserve these objectives supplement each other. In *P.J.Irani's case (1962)1 S.C.J.194 (supra)*, Sarkar, J., has observed at page 193 of the Report that "the purpose of the Act, quite clearly, is to prevent unreasonable eviction and also to control rent. These two purposes are intertwined". It is obvious that if the trustees of the public religious trusts and public charities are to be given freedom to charge the normal market rent then to make that freedom effective it will be necessary to arm the trustees with the right to evict the tenants for non-payment of such market rent. The State Government on material before it came to the conclusion that the 'fair rent' fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from their tenants reasonable market rent and if

that be so non-eviction when reasonable market rent is not paid would be unreasonable and if the market rent is paid by the tenants no trustee is going to evict them. It is, therefore, clear that granting total exemption cannot be regarded as excessive or unwarranted.

15. Apart from this aspect of the matter it is conceivable that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government may have felt that the trustees of such buildings should be able to effect evictions without being required to fulfil other onerous conditions which must be complied with by private landlords when they seek evictions for such purposes. In our view, therefore, the total exemption granted to such buildings under the impugned notification is perfectly justified.

16. The reliance on Saurashtra Notification in our view, would be of no avail to the petitioners or the appellants. The manner in which exemption from rent control provisions should be granted. whether it could be partial or total and if so on what terms and conditions would be matters for each State Government to decide in the light of the scheme and provisions of the concerned enactment and the facts and circumstances touching the classification made. And if the State of Madras has thought fit to grant the exemption in a particular manner by the impugned notification it will be difficult to find fault with it if the exemption so granted is not illegal or unconstitutional. It will be interesting to note that even under the Saurashtra Notification the term or condition contained in schedule 'A' thereto also makes the position clear that eviction may follow if the permitted enhanced rent is not paid or allowed to fall in arrears for two consecutive months by the tenant of such buildings belonging to public religious or charitable trusts.

17. In the result the challenge to impugned notification fails and the writ petitions and the civil appeals are dismissed. All interim orders if any, are vacated. There will be no order as to costs.

V.K. *Petitions and Appeals dismissed.*

THE SUPREME COURT OF INDIA
(Civil Appellate Jurisdiction)

Present:- *Y.V.Chandrachud,C.J., R.S.Pathak and Sabyasachi Mukharji, JJ.*

*C.A.No.1601 of 1971 *7th October,1983.*

New Theatres (Carnatic Talkies) Ltd., Coimbatore ..... *Appellant**
v.
N.Vajrapani Naidu ..... *Respondent*

Madras City Tenants' Protection Act (III of 1922), Section 9 (as amended in 1960) - Effect of amendment - If has retrospective effect.

When the Madras City Tenants' Protection Act was extended to the town of Coimbatore in 1958, the respondent's (landlord's) suit for ejectment had already been filed and in fact was pending in appeal. It was never disputed that S.9 would operate retrospectively and would affect the rights of parties in the pending appeal. It was on that basis the appellant (tenant) applied to the Court for the benefit of S.9. When the Madras Act XIII of 1960 amended the principal Act it amended not only S.9, but S.10 also. S.10 was amended in order that the amended provision should apply to pending ejectment suits and proceedings. Hence, it follows that if the suit was pending on the date when the amendments in the principal Act were brought into force the amended provisions of the Act will govern the disposal of the suit. *[Paras 7 & 8]*

T.S.Krishnamurthy Iyer, Senior Advocate (*Gopal Subramanium, Mrs.Saroja Gopalakrishnan*, Advocates with him) for Appellant. *P.Govindan Nair*, Senior Advocate (*Miss.Seitha Vaidyalingam, Mrs.Baby Krishnan*, Advocates with him) for Respondent.

Cases referred to:-

N.Vajrapani Naidu v. New Theatres Carnatic Talkies Ltd., (1965)1 S.C.J.368 : (1965)1 M.L.J.(S.C.)47 : (1965)1 An W.R.(S.C.)47: (1964)6 S.C.R.1015 : A.I.R.1964 S.C.1440.
Gnanaprakasam v. Mahboob Bi, (1962)1 M.L.J. 254 : (1961) M.W.N.565.

The Judgment of the Court was deliveredby

R.S.Pathak, J.:- This appeal by special leave is directed against an order dated March 30, 1971, of the Madras High Court dismissing a revision petition arising out of proceedings under the Madras City Tenants' Protection Act, 1921.

2. Almost fifty years ago, on September 19, 1934, the respondent and his mother granted a lease in favour of one Abhirama Chettiar in respect of 50 cents of open land in Coimbatore for a period of twenty years on an annual rent of Rs.1,080/- for the construction of a building suitable for use as a theatre. Abhirama Chettiar constructed a theatre on the site. Subsequently, on July 14, 1937, Abhirama Chettiar assigned his rights to the appellant. The appellant attorned to the respondent and was accepted as a tenant. In March, 1964, the respondent served notice upon the appellant calling upon it to vacate the property and surrender vacant possession of the site. The appellant refused to do so, and set up an oral agreement entitling it to an extension of the lease for a further period of twenty years. The respondent filed a suit against the appellant. Shortly thereafter, the appellant filed a suit against the respondent for specific performance of an agreement to extend the lease. On January 16, 1957 the learned Subordinate Judge, Coimbatore, decreed the respondent's suit for possession with mesne profits and dismissed the appellant's suit. The appellant appealed to the High Court against the two decrees. During the pendency of the appeals the Madras City Tenants' Protection Act, 1921 was extended to the town of Coimbatore with effect from February 19, 1958. The appellant filed Civil Miscellaneous Petition No.1835 of 1958 in the appeal arising out of the suit for ejectment and prayed for directions under S.9 of the Act for the sale of the site to it. The application was resisted by the respondent on the ground that Section 9 was void. On July 28, 1958 Panchapakesa Iyer, J., passed the following order:

"I declare that the petitioner is entitled to purchase the site concerned in the petition under Section 9 of the Act, but on paying the full market value current today as freely undertaken by himself. The lower Court will appoint a suitable experienced Commissioner to fix the value of the site based on the market value prevalent this day (28th July, 1958). The Commissioner's fees will be paid by the petitioner who will bear it himself. In this petition all the parties will bear their own costs. As soon as this order becomes final the petitioner will withdraw A.S.Nos.100 of 1957 and 255 of 1957 on the file of this Court, as infructuous as undertaken by him, and they will then be dismissed without costs."

The petition was remitted by the learned Judge to the Subordinate Court, Coimbatore for appointing a Commissioner to fix the market value of the site. Against that order the respondent preferred a Letters Patent Appeal, which was dismissed. The respondent then appealed to the Supreme Court. By its judgment dated March 4, 1964, reported as *N. Vajrapani Naidu v. New Theatres Carnatic Talkies Ltd., Coimbatore, (1965)1 S.C.J.368: (1965)1 M.L.J.(S.C.)47 : (1965)1 An W.R. (S.C.)47 : (1964)6 S.C.R.1015 : A.I.R.1964 S.C.1440*, the Supreme Court upheld the judgment of Panchapakesa Iyer, J., and dismissed the appeal.

3. Now during the pendency of the appeal in the Supreme Court, Section 9 of the Madras City Tenants' Protection Act was amended by Madras Act No.XIII of 1960 published in the Fort St. George Gazette dated July 27, 1960. Upon that, the respondent filed two petitions in the High Court, C.M.P.No.7241 of 1960 praying for the review and modification of the order dated July 28, 1958 in the light of the amended Section 9, and C.M.P. No.7241 of 1960 praying for stay of the enquiry directed by that order. On April 1, 1964, upon the dismissal of the respondent's appeal in this Court, the High Court dismissed the appeals against the decrees passed by Panchapakesa Iyer, J., as withdrawn. The High Court also transferred the C.M.P.Nos.7241 and 7242 of 1960 to the trial Court for consideration, and directed the trial Court to fix the market value and pass final orders in C.M.P.No.1835 of 1958. The learned Subordinate Judge held that the respondent was entitled to the benefit of the amended Section 9 of the Act, and directed the Commissioner to deter-

mine the minimum extent of land necessary for convenient enjoyment by the appellant and to take steps for fixing the price thereof on the basis of the average market value of the three years immediately preceding the date of its order. C.M.P.No. 7242 of 1960 was dismissed as superfluous. Against the order of the trial Court the appellant filed an appeal in the Court of the learned First Additional Judge, Coimbatore. The appeal was dismissed. Thereafter, the appellant filed Civil Revision Petition No.1883 of 1968 in the High Court, and on March 30, 1971 the High Court dismissed the Revision Petition. The High Court affirmed that the case was governed by the amended Section 9 of the Act, and rejected the contention of the appellant that C.M.P.No. 7241 of 1960 was not competent in the High Court as the order dated July 28, 1958 by Panchapakesa Iyer, J., had been confirmed by the Supreme Court in appeal.

4. Two contentions have been raised by the appellant in this appeal. The first is that the amended Section 9 of the Madras City Tenants' Protection Act cannot be invoked in the present case, and that Sec.9, as it stood before the amendment, is the provision which governs the rights of the parties. The other contention is that, in any event, the amended Section 9 should have been invoked in the appeal pending in this Court and the relief not having been sought there it was not open to the respondent to seek relief after the appeal has been dispsosed by this Court and the order of Panchapakesa Iyer, J., had acquired finality.

5. Before its amendment by Madras Act XIII of 1960, S.9 provided as follows:—

"9. (1) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts Act, 1882, taken by the landlord, may within one month of the date of the Madras City Tenants' Protection (Amendment) Act, 1955, coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the land is situated or within one month after the service on him of summons, apply to the Court for an order that the landlord shall be directed to sell the land for a price to be fixed by the Court. The Court shall fix the price according to the lowest market value prevalent within seven years preceding the date of the order and shall order that, within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) xxx xxx xxx xxx

(3) On payment of the price the Court shall pass a final order directing the conveyance of the land by the landlord to the tenant. On such order being made the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

6. Upon its amendment, Section 9 now reads:-

"9. (1) (a) any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts Act, 1882, taken by the landlord, may within one month of the date of Madras City Tenants' Protection (Amendment) Act, 1955, coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the land is situated or within one month after the service on him of summons apply to the Court, for an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application.

(b) on such application, the Court shall first decide the minimum extent of the land whichmay be necessary for the convenient enjoyment by the tenant. The Court, shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under Clause (a) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the Court not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) xxx xxx xxx xxx xxx xxx

(3) (a) on payment of the price fixed under Clause (b) of sub-section (1) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in Clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

7. The question whether the case is governed by the unamended Section 9 or the amended Section 9 turns on the consideration whether the amendment of Section 9 was intended to operate retrospectively or must be construed as prospective only. Let us begin from the beginning. When the Madras City Tenants' Protection Act was extended to the town of Coimbatore in 1958, the respondent's suit for ejectment had already been filed and in fact was pending in appeal. It was never disputed between the parties that Section 9 would operate retrospectively and affect the rights of the parties in the pending appeal. It was on that basis that the appellant applied to the Court for the benefit of the provisions of Section 9. The Act itself clearly laid down that S.9 could be invoked in a pending suit or proceeding, for Section 10 declared that S.9, among other provisions, would "apply to suits in ejectment .... which are pending .... in the city of Madras before the commencement of the Madras City Tenants' Protection (Amendment) Act, 1958, and in any municipal town or village, before the date with effect from which this Act is extended to such town or village." It is to enable a tenant to secure the benefit of S.9 in a pending suit or proceeding that S.9(1) provides that such tenant may apply under that provision "within one month of the date of the Madras City Tenants' Protection (Amendment) Act, 1955 coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the land is situated ... ..." This provision was necessary to enable Section 9 to govern pending suits and proceedings. The other provision in Section 9(1) providing that the period of one month would commence from "the service on him of summons" applied to future suits and proceedings.

8. When the Madras Act XIII of 1960 amended the principal Act, it amended not only Section 9 thereof, but Section 10 also. Section 10 was amended in order that the amended provisions should apply to pending ejectment suits and proceedings. The Legislature employed the same device in respect of pending suits and proceedings as it had when the Act was originally applied to such suits and proceedings, the only difference being that while the original Section 10 referred to the then existing provisions of the Act, the amended Section 10 referred to the amended provisions, including the amended Section 9, of the Act. It is apparent from the provisions of the amended Section 9(1) extracted earlier that the scheme respecting the tenant's right to purchase and the landlord's obligation to sell, the land now stood modified. Whereas the original S.9(1) provided for the making of an application by the tenant within a specified period to the Court for an order directing the landlord to sell the land for a price to be fixed by the Court, and the Court was required to fix the price according to the lowest market value prevalent within seven years preceding the date of the order, and to order, within a period to be determined by the Court, the tenant to pay into Court or otherwise as directed the price so fixed, the amended Section 9 (1) is divided into two clauses. Clause (a) entitles the tenant, within an identical period, to apply to the Court for an order requiring the landlord to sell, for a price to be fixed by the Court, the whole, or part of, the extent of the land specified in the application. The Court can now direct the sale of a part only of the land mentioned in the application and is not compelled to pass an order in respect of the entire land. Clause (b) provides that the Court will first decide the minimum extent of the land necessary for convenient enjoyment by the tenant, and thereafter the Court will fix the price of such minimum extent of land or of the extent of the land specified in the application,

whichever is less. Furthermore, the price is to be the average market value of the three years immediately preceding the date of the order. We are clear in our mind that if the suit was pending on the date when the amendments in the principal Act were brought into force, the amended provisions of the Act will govern the disposal of the suit.

9. Now, the appellant had already filed C.M.P.No. 1835 of 1958 praying for directions under Section 9 for the sale of the site. On that application Panchapakesa Iyer, J., had passed an order dated July 28, 1958 holding the appellant entitled to purchase the site on paying the full market value current on that date, and had directed the trial Court to appoint a Commissioner to fix the value of the site. The order did not dispose of the application and the suit, for under the original Section 9 (3) the statute contemplated an order by the Court, after it was satisfied that the tenant had paid the price determined by it, directing the conveyance of the land by the landlord to the tenant. It was only after such order was made that the application and the suit would stand concluded. In *Gnanaprakasam v. Mahboob Bi, (1962)1 M.L.J.254 :(1961) M.W.N.565*, a learned single Judge of the Madras High Court held that even where the original Court had made an order fixing the price of the land and directing its payment by the tenant, the application filed by the tenant, could not be regarded as at an end so long as final orders directing execution of conveyance and delivery of possession were not passed. The stage for passing such order had not been reached yet when the principal Act was amended by Act XIII of 1960. The suit continued pending on the date when the amendments took effect. And consequently, it was now governed by the provisions of the amended Section 9. We may reiterate that the order dated July 28, 1958 did not complete the proceeding in the suit. It constituted one stage only in the suit, and inasmuch as the suit was now to be disposed of in accordance with the amended statute the incomplete proceeding had to give way to the operation of the amended statute. As the scheme under the original section stood superseded by the scheme enacted under the amended section, the order of July 28, 1958 stood aborted and pursuant to the amended section fresh proceedings had to be taken by the Court in order to dispose of the suit.

10. The respondent, therefore, filed C.M.P. No.7241 of 1960 praying for a review of the order dated July 28, 1958 in the light of the amended Section 9. In other words, the Court was now called upon to dispose of the application of the appellant, not in the light of the provisions of the original Section 9, but on the basis of the provisions of the amended Section 9. We are of opinion that the trial Court is right in taking the view, and the High Court in affirming it, that C.M.P.No.1883 of 1968 and the suit had to be disposed of on the basis of the provisions of the amended Section 9. The contention to the contrary raised by the appellant must fail.

11. We are also unable to accept the other contention of the appellant that the respondent should have invoked the benefit of the amended Section 9 in the appeal pending in this Court, and that not having done so it was not open to the respondent to apply for relief in the Court below after the appeal had been disposed of by this Court. It is apparent that the scope of the appeal filed in this Court was restricted to the validity of Section 9 and Section 12 of the unamended Madras City Tenants' Protection Act. It must be remembered that the order of Panchapakesa Iyer, J., which gave rise to that appeal, was made before the Act was amended in 1960, and this Court concerned itself solely with the validity of the unamended statutory provisions. In fact, a perusal of its judgment will show that this Court declined to consider the operation of the amendments brought about in 1960. In the circumstances, it is not possible to urge that the respondent might, or ought to have insisted on relief under the amended Section 9 in the appeal pending in this Court. It was, therefore, open to the respondent after the disposal of the appeal by this Court to apply to the Court below for an order in terms of the amended Section 9.

12. In the result, the appeal is dismissed with costs.

V.K. *Appeal dismissed.*

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Present:- *O.Chinnappa Reddy, A.P.Sen and E.S.Venkataramiah, JJ.*

*C.A.Nos.2332, 1970, 2432 etc. of 1981, Special Leave Petn. (Civil) Nos.1819, 3324 etc. of 1984 ..... *29th August,1984.*

Jeewanlal (1929) Ltd. etc. .... *Appellants**
v.
Appellate Authority under the Payment of Gratuity Act and others, etc. .... *Respondents.*

(A) Payment of Gratuity Act (XXXIX of 1972), Section 4(2) - Fifteen days' wages - Meaning of - Monthly wages to be wages for 26 working days.

Sub-section (1) of Section 4 of the Payment of Gratuity Act incorporates the concept of gratuity being a reward for long continuous and meritorious service. Sub-section (2) of Section 4 provides for payment of gratuity at the rate of "fifteen days wages" based on the rate of wages last drawn by the employee concerned for every completed year of service. The legislative intent is obvious. Had the legislature stopped with the words "fifteen days wages" occurring in Sub-section (2) of Section 4 of the Act, there was something to be said for the submission based upon the decision of a learned single Judge of the Andhra Pradesh High Court in *Associated Cement's case, (1976)1 Lab.L.J. 222 : (1976) Lab. I.C. 926.* But the legislature did not stop with the words "fifteen days wages" in Sub-section (2) of Section 4 of the Act. The words "fifteen days wages" are preceded by the words "at the rate of and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The word 'rate' appears twice in Sub-section (2) of Section 4 and it necessarily involves the concept of actual working days. Although a month is understood to consist of 30 days, gratuity payable under the Act treating the monthly wages as wages for 26 working days is not new or unknown. *[Para 10]*

(B) Payment of Gratuity Act (XXXIX of 1972), Section 4(3) - Construction - Contention that 20 months' wages must mean wages for 520 working days, wholly misconceived.

It is said that if a month under Sub-section (2) connotes 26 working days in a month, for purposes of calculating the amount of gratuity then the rule of harmonious construction requires that the words "20 months' wages" in Sub-section (3), thereof must mean wages for 520 working days taking the actual working days in 20 months and not 600 days taking that a month consists of 30 days. The contention is wholly misconceived. Sub-sections (2) and (3) of Section 4 of the Act are designed to achieve two separate and distinct objects and they operate as two different wages. While Sub-section (2) provides for the mode of calculation of the amount of gratuity. Sub-section (3) seeks to impose a ceiling on the amount of gratuity payable at 20 months' wages. It is meant to provide an incentive to employees to serve for the period of 30 years or more. By no rule of construction Sub-section (2) of Section 4 of the Act which uses the words "fifteen days wages" and not half a month's wages be called in aid for construction of the words "20 months' wages" appearing in Sub-section (3) of Section 4 of the Act. *[Para 14]*

(C) Payment of Gratuity Act (XXXIX of 1972), Sections 2(a)(i) and 3 - Appropriate Government in relation to Section 3 - State - What is? .

It would appear that the definition of appropriate Government in Section 2(a)(i) in relation to an establishment makes a distinction between establishments and factories. In relation to an establishment belonging to or under the control of the Central Government and of a factory belonging to or under the control of the Central Government the appropriate Government is the Central Government. But the Central Government is the appropriate Government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States. *[Para 15]*

Cases referred to:-

Shri Digvijay Woollen Mills Ltd. v. Mahendra Prataprai Buch., (1980) Lab I.C.1052: (1980)4 S.C.C.106 : 57 F.J.R. 52 : (1981)1 S.C.R.64 : A.I.R. 1980 S.C. 1944; Lakshmi Vishnu Textile Mills v. P.S.Malvankar, (1979)1 Lab L.J.443 : (1979) Lab I.C.562; Associated Cement Co. Ltd. v. Appellate Authority under Payment of Gratuity Act, (1976)1 Lab L.J. 222 : (1976) Lab I.C. 926; Swamy v. Controlling Authority under Payment of Gratuity Act, (1978)52 F.J.R. 138 : (1978) Lab I.C. 1285; Hukamchand Jute Mills Ltd. v. State of West Bengal, (1976)49 F.J.R. 145 : (1976) Lab I.C. 857; Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd., (1981)2 S.C.R. 796 : (1981) Lab I.C. 307 : (1981)2 S.C.C. 238 : A.I.R. 1981 S.C.852.

The Judgment of the Court was delivered by

Sen, J.:- These appeals by special leave and the connected special leave petitions from the Judgment and Order of the Madras High Court dated June 19, 1981, raise a question of substantial importance. The question is whether the words "fifteen days' wages" occurring in Sub-sec.(2) of S.4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act'), in the case of monthly-rated employees, can only mean half a month's wages : *i.e.,* wages which they would have earned in a consecutive period of 15 days or in 13 working days and therefore in calculating the amount of gratuity payable to such employees the rate of wages earned by them has to be multiplied by "thirteen" there being 26 working days in a month and not by "fifteen". A subsidiary question arises as to whether the words "twenty months' wages" occurring in Sub-sec.(3), thereof would only mean wages for 520 working days taking the actual working days in 20 months or must mean 600 taking that a month consists of 30 days.

2. It is not necessary to state the facts in any great detail. In all these appeals the respondent in each case was a montly-rated employee and the appellant a public limited company was his employer. The facts in each of these cases are more or less similar and it will suffice to state the facts in one of them. In Civil Appeal No.2332 of 1981 - *Messrs.Jeewanlal (1929) Ltd. v. The Appellate Authority under the Payment of Gratuity Act,Madras,* the respondent ceased to be an employee on attaining the age of superannuation after completing 35 years of service. Since, he was entitled to payment of gratuity under the Act, the appellant calculated the amount of gratuity payable to him under Sub-sec. (2) of S.4 on the basis that "fifteen days' wages" meant half of the monthly wages last drawn by him, *i.e.,* for 13 working days there being 26 working days in a month. Being dissatisfied with such payment, the respondent made a claim under Sub-sec.(1) of S.7 of the Act before the Controlling Authority, Madras, for determination of the amount of gratuity payable to him. He made a demand for payment of an additional sum as gratuity on the ground that his daily wages should be ascertained on the basis of what he actually got for 26 working days and the amount of "fifteen days' wages" should be calculated accordingly not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. The appellant contested the claim contending that the words "fifteen days' wages" occurring in sub-sec.(2) of S.4 of the Act only meant half a month's wages and since a month consisted of 26 working days the amount of gratuity was rightly arrived at by multiplying the daily wages by 'thirteen'.

3. The Controlling Authority by its order dated September 23, 1978, held that for the purposes of calculating "fifteen days' wages" it was necessary to ascertain one day's wage and since a month consists of 26 working days the amount of gratuity should be calculated accordingly, *i.e.,* by dividing the monthly wages last drawn by 26 multiplied

by 'fifteen' and not by just taking half of his wages for a month of 30 days or by dividing such monthly wages by 30. It accordingly directed the appellant to pay Rs.6,069-00 as gratuity under Sub-s.(1) of S.4 of the Act. On appeal, the Appellate Authority, Madras, by its order dated July 12, 1976, held that there was an error in the mode of computation of the amount of gratuity payable to the respondent. According, to it the gratuity payable to the respondent would have to be calculated at half of his monthly rate of wages, *i.e.*, wages he would have earned in a consecutive period of 15 days and his daily wages had to be multiplied by "thirteen" and not by "fifteen" for every completed year of service or part thereof not exceeding six months. It accordingly reduced the amount of gratuity payable to Rs.5,259-80 p.

4. It, however, appears that the Appellate Authority in several other cases took a view to the contrary such as the one in Civil Appeal No.2432 of 1981 relating to the same employer. Messrs. Jeewanlal (1929) Ltd., as also Civil Appeal No.1970 of 1981 relating to another employer. Messrs. Madura Coats Ltd., as also in Civil Appeal No.2559 of 1984 relating to M/s.Binny Ltd., and upheld the orders of the Controlling Authority. As a result of these conflicting orders passed by the Appellate Authority, the employers in some of these cases and the employees in others had to file petitions in the High Court under Article 226 of the Constitution and they have been disposed of in the judgment under appeal. The High Court following the decision of this Court in *Shri Digvijay Woollen Mills Ltd. v. Mahendra Prataprai Buch, (1980) Lab. I.C.1052 : (1980)4 S.C.C.106 : 57 F.J.R.52 : (1981)1 S.C.R.64 : A.I.R.1980 S.C.1944*, and that of the Bombay High Court in *Lakshmi Vishnu Textile Mills v. P.S.Mavlankar, (1979)1 Lab L.J. 443: (1979) Lab. I.C. 562*, held that in order to determine "fifteeen days' wages" of a monthly-rated employee under Sub-s.(2) of S.4 of the Act it was necessary to determine one day's wage last drawn by him and then multiply the same "fifteen" times and the resultant sum had to be multiplied by twenty to arrive at the maximum amount of gratuity payable under Sub-s.(3) of S.4 of the Act. It accordingly restored the orders of the Controlling Authority.

5. In support of these appeals learned counsel for the appellants submitted that the decision of this Court in *Shri Digvijay Woollen Mills Ltd.*, case, *(1981)1 S.C.R.64*, does not lay down any principle, but on the contrary the Court expressly observed that "it was not necessary to go into the question as to the correctness of the conflicting views taken by different High Courts'. Reliance was placed on the decision of the learned single Judge of the Andhra Pradesh High Court in *Associated Cement Co.Ltd. v. Appellate Authority under Payment of Gratuity Act (Regional Assistant Commissioner of Labour, Guntur), (1976)1 Lab L.J. 222 : (1976) Lab I.C.926*, which was approved by a Division Bench of the same High Court in *Swamy v. Controlling Authority under Payment of Gratuity Act, (1978)52 F.J.R. 138 : (1978) Lab.I.C. 1285*. In all fairness to the learned counsel it must be said that they also brought to our notice the decisions of the Calcutta High Court in *Hukamchand Jute Mills Ltd. v. State of West Bengal, (1976)49 F.J.R. 145 : (1976) Lab. I.C. 857*, that of the Bombay High Court in *Lakshmi Vishnu Textile Mills' Case, (1979) Lab.I.C.562*, and that of the Gujarat High Court in *Digvijay Woollen Mills' case, (1981)1 S.C.R.64*, taking a view to the contrary.

6. It is urged that the words "fifteen days' wages" occurring in Sub-s.(2) of S.4 of the Act are clear and unambiguous and must mean half a month's wages and therefore there was no scope for an artificial calculation being made by dividing the wages for a month by the number of working days, *viz.*, 26 for determining the daily wages and multiplying the same by "fifteen" to determine the amount representing 15 days' wages inasmuch as the wages of a monthly-rated employee were for all the 30 days of a month and not 26 working days alone and therefore "fifteen days' wages" in his case would amount only to half a month's wages.

It is further urged that Parliament amended Sub-sec.(3) of S.4 of the Act on the recommendation of the Select Committee and raised the ceiling of gratuity from 15 months' wages to 20 months' wages and the reason given by the Select Committee was that there should be an incentive for employees to serve beyond a period of 30 years. It is submitted that by providing for a maximum gratuity of 20 months' wages the Select Committee meant that it should be payable for a service of 40 years, and that if the contention of the employees were to prevail the maximum gratuity would become payable even after completion of 34 years and 8 months instead of 40 years. We are afraid this contention cannot prevail.

7. These submissions broadly stated give rise to two questions. The first is whether for the purpose of computation of "fifteen days' wages" of a monthly-rated employee under Sub-s.(2) of S.4 of the Act, the monthly wages last drawn by him should be treated as wages for 26 working days and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. The second question is whether the words "twenty months' wages" occurring in Sub-s.(3) of S.4 of the Act must be construed to mean wages for 520 days taking the actual working days in twenty months or must mean wages for 600 days taking that a month consists of 30 days. As regards the first the answer must be in the affirmative in view of the decision of this Court in *Shri Digvijay Woollen Mills case, (1980)4 S.C.C.106 : (1980) Lab. I.C. 1052 : A.I.R. 1980 S.C.1944*, but learned counsel for the appellant want us to take a second look at it as according to them nothing was settled in that case. As regards the second question the learned counsel contend that Sub-secs.(2) and (3) of S.4 of the Act must receive a harmonious construction as they provide for the mode of calculating the total amount of gratuity payable to an employee upon termination of his services under Sub-sec.(1) of S.4 of the Act and it is said that a month cannot mean 26 working days for the purposes of Sub-sec. (2) and 30 days for the purposes of Sub-sec.(3).

8. The Payment of Gratuity Act 1972 is enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age, etc. For wage-earning population security of income when the worker becomes old or infirm is of consequential importance. The provisions of social security measures, retiral benefits like gratuity, provident fund and pension (known as the triple-benefits) are of special importance. In bringing the Act on the statute-book the intention of the legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained all-embracing complete and comprehensive code relating to gratuity. The significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory statutory retiral benefit.

9. As is true in every case involving construction of a statute our starting point must be the language employed by the legislature. It is necessary to set out the relevant statutory provisions of the Act. Sub-sec.(1) of S.4 of the Act reads:-

> "4(1). Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:
>
> (a) on his superannuation, or
>
> (b) on his retirement or resignation, or
>
> (c) on his death or disablement due to accident or disease.
>
> Provided that the completion of five

years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee gratuity payable to him shall be paid to his nominee or if no nomination has been made to his heirs.

Explanation - For the purposes of this section disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

Sub-ss.(2) and (3) of S.4 of the Act provide as follows:

"4(2). For every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment and for this purpose the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee employed in a seasonal establishment the employer shall pay the gratuity at the rate of seven days' wages for each season."

"4(3). The amount of gratuity payable to an employee shall not exceed twenty months' wages."

The term 'wages' is defined in S.2(s) as follows:

"2(s). "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance, but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

10. In dealing with interpretation of Sub-ss.(2) and (3) of S.4 of the Act we must keep in view the scheme of the Act. Sub-s.(1) of S.4 of the Act incorporates the concept of gratuity being a reward for long continuous and meritorious service. Sub-s.(2) of S.4 of the Act provides for payment of gratuity at the rate of "fifteen days' wages" based on the rate of wages last drawn by the employee concerned for every completed year of service. The legislative intent is obvious. Had the legislature stopped with the words, "fifteen days' wages" occurring in Sub-s.(2) of S.4 of the Act there was something to be said for the submission advanced by the learned counsel for the appellants based upon the decision of learned single Judge of the Andhra Pradesh High Court in *Associated Cement's case, (1976) Lab. I.C. 926*, which was later approved by a Division Bench of that Court in *Swamy's case, (1978) Lab. I.C. 1285: 52 F.J.R. 138.* But the legislature did not stop with the words "fifteen days' wages" in Sub-s.(2) of S.4 of the Act. The words "fifteen days' wages" are preceded by the words "at the rate of" and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The emphasis is not on what an employee would have earned in the course of fifteen days during the month when his employment was last terminated, but on the rate of fifteen days' wages for every completed year of service based on the rate of wages last drawn by the employee concerned. The word 'rate' appears twice in Sub-s.(2) of S.4 and it necessarily involves the concept of actual working days. In *Shri Digvijay Woollen Mills' case, (1980)4 S.C.C.106 : (1980) Lab.I.C. 1052 : A.I.R.1980 S.C.1944*, the Court rightly observed that although a month is understood to consist of 30 days, gratuity payable under the Act treating

the monthly wages as wages for 26 working days is not new or unknown.

11. In construing a social welfare legislation the Court should adopt a beneficent rule of construction and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous the Court must give effect to it whatever may be the consequence for in that case the words of the statute speak the intention of the legislature. When the language is explicit its consequences are for the legislature and not for the Courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation the Courts must not yield to the temptation of seeking ambiguity when there is none.

12. It is not correct to say that the decision in *Shri Digvijay Woollen Mills' case, (1980) Lab. I.C.1052 : (1980)4 S.C.C.106 : A.I.R. 1980 S.C.1944*, does not lay down any principle. Gupta, J., speaking for the Court set out the following passage from the judgment of the Gujarat High Court in *Shri Digvijay Woollen Mills'* case (Para 4):

> "The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilized and on that basis at the rate of fifteen days' wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all the 30 days of the month. He gets 52 Sundays in a year as paid holidays and therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality.......A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or Tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."

And then observed:

> "The view expressed in the extract quoted above appears to be legitimate and reasonable."

The learned Judge then went on to say:

> "Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse."

He further observed that it was not necessary to consider whether another view was possible and declined to interfere under Art.136 in a matter where the High Court had taken a view favourable to the employees and the view taken could not be said to be in any way unreasonable and perverse and then added:

> "Incidentally to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown."

We find that the same view has been taken by as many as three High Courts *viz.*, by the Calcutta, Bombay and Gujarat High Courts in the cases referred to at the Bar. We find no compelling reason to take a view different from the one expressed by this Court in *Shri Digvijay Woollen Mills' case, (1980) Lab. I.C.1052: (1980)4 S.C.C.106 : A.I.R. 1980 S.C.1944.*

13. The intention of the legislature enacting Sub-s.(2) of S.4 of the Act was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a

self-contained all-embracing complete and comprehensive code relating to gratuity as a compulsory retiral benefit. The quantum of gratuity payable under Sub-s.(2) of S.4 of the Act has to be fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or more in excess of six months' subject to the maximum of 20 months' wages as provided by Sub-s.(3) thereof. The whole object is to ensure that the employee concerned must be paid gratuity at the rate of fifteen days' wages for 365 days in a year of service. The total amount of gratuity payable to such employee at that rate has to be multiplied by the number of years of his service subject to the ceiling imposed by Sub-s.(3) of S.4 of the Act, *viz.*, that such amount shall not exceed 20 months' wages. The construction of Sub-s.(2) of S.4 of the Act adopted by the learned single Judge of the Andhra Pradesh High Court in *Associated Cement Company's case, (1976) Lab. I.C. 926*, and later approved by a Division Bench of that Court in *Swamy's case, (1978) Lab I.C. 1285*, would make it utterly unworkable. If the determination of the amount of gratuity payable under Sub-s.(2) of S.4 depends on the number of calendar days in a month in which the services of the employee concerned terminates the quantum of gratuity payable would necessarily vary between an employee and employee belonging to the same class drawing the same scale of wages with like service for the same number of years. Obviously, this could not have been the legislative intention.

14. The next question is: Whether a month cannot mean 26 working days for purposes of Sub-s.(2) of S.4 of the Act and 30 days for purposes of Sub-s.(3) thereof. It is said that if a month under Sub-s.(2) connotes 26 working days in a month for purposes of calculating the amount of gratuity then the rule of harmonious construction requires that the words "20 months' wages" in Sub-s.(3) thereof must mean wages for 520 working days taking the actual working days in 20 months and not 600 days taking that a month consists of 30 days. The contention is wholly misconceived. Sub-ss.(2) and (3) of S.4 of the Act are designed to achieve two separate and distinct objects and they operate at two different stages. While Sub-s.(2) provides for the mode of calculation of the amount of gratuity Sub-s.(3) seeks to impose a ceiling on the amount of gratuity payable at 20 months' wages. It is meant to provide an incentive to employees to serve for the period of 30 years or more. By no rule of construction Sub-s.(2) of S.4 of the Act which uses the words "fifteen days' wages" and not half a month's wages be called in aid for construction of the words "20 months' wages" appearing in Sub-s.(3) of S.4 of the Act.

15. We do not think it necessary to deal at length the last and third question raised in some of these appeals *viz.*, the objection to the jurisdiction of the Controlling Authority under S.3 of the Act to entertain the claim against some of the appellants. It is said that Messrs Jeewanlal (1929) Ltd., is an all-India concern having its branches in more than one State and therefore the 'appropriate Government' within the meaning of S.2(a)(1)(b) of the Act in relation to them is the Central Government for purposes of S.3. The appropriate Government is the Central Government in relation to an establishment belonging to or under the control of the Central Government or having branches in more than one State or of a factory belonging to or under the control of the Central Government or in the case of a major port, mine, oilfield or railway company. Section 2(a)(i) of the Act reads as follows:

"2. In this Act unless the context otherwise requires.

(a) "appropriate government" means-
(i) in relation to an establishment-
(a) belonging to or under the control of the Central Government.
(b) having branches in more than one State.
(c) of a factory belonging to or under the control of, the Central Government

(d) of a major port, mine, oilfield

or railway company, the Central Government
(ii) in any other case, the State Government:

It would appear that the definition of appropriate Government in S.2(a)(1) in relation to an establishment makes a distinction between establishments and factories. In relation to an establishment belonging to, or under the control of, the Central Government and of a factory belonging to or under the control of the Central Government the appropriate Government is the Central Government. But, the Central Government is the appropriate Government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States. We feel that the point relating to the jurisdiction of the Controlling Authority under S.3 of the Act does not really arise. It appears that Messrs. Jeewanlal (1929) Ltd., have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras, *viz.*, Shree Ganeshwar Aluminium Works and Messrs Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1,300 workmen in its factories at Calcutta, Bombay and Madras. We are inclined to the view that the Controlling Authority had jurisdiction to entertain the claim of an employee working in an office attached to a factory as such an office would be an adjunct of the factory, but that is not the question before us. The Controlling Authority has in fact confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras, but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question. That being so the contention relating to jurisdiction of the Controlling Authority under S.3 of the Act must fail.

16. It has been our unfortunate experience that a beneficent measure like Payment of Gratuity Act, 1972 providing for a scheme of retiral benefit has been beset with many difficulties in its application. It need not be over emphasised that a legislation of this kind must not suffer from any ambiguity. In the recent past the Court in *Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd., (1981)2 S.C.C.238 : (1981) Lab. I.C.307: (1981)2 S.C.R.796 : A.I.R. 1981 S.C.852,* faced with the problem as to whether the expression "actually employed" in Explanation I to S.2(c) of the Act must in the context in which it appeared meant "actually worked". The inclusive part of the definition 'continuous service' in S.2(c) is to amplify the meaning of the expression by including interrupted service under certain contingencies which but for such inclusion would not fall within the ambit of the expression 'continuous service'. But, the use of the words 'actually employed' in Explanation I to S.2(c) of the Act created a difficulty. The Court observed that it was not permissible to attribute redundancy to the words 'actually employed' and accordingly held that the expression 'actually employed' in Explanation I to S.2(c) of the Act meant 'actually worked'. The law declared by this Court in *Lalappa Lingappa's case (1981)2 S.C.R. 796* resulted in denial of gratuity to a large number of permanent employees whose short term absence had remained unregularised due to lack of appreciation of the significance for the purpose of working out their entitlement to gratuity. It is to be regretted that the Government waited for a period of three years before introducing the Payment of Gratuity (Amendment) Bill, *1984* to remove the lacuna in the definition of continuous service in S.2(c) of the Act by specifically providing that a period of absence in respect of which no punishment or penalty has been imposed would not operate to interrupt the continuity of service for the purpose of payment of gratuity. It also amplified the definition of continuous service under S.2(c) of the Act.

Such a belated legislation must have worked great injustice to a large number of permanent employees.

17. In these cases now before us the Court is faced with the problem of determining the mode of calculating the amount of gratuity payable to the employees concerned under Sub-s.(1) of S.4 of the Act upon the termination of their services. It turns on the much vexed question as to the true meaning of the words "fifteen days' wages" occurring in Sub-sec.(2) of S.4 of the Act. The section does not specify how the rate of wages last drawn by such employees is to be determined for the purpose of determining the rate of "fifteen days' wages under Sub-sec.(2) of S.4 of the Act. This gave rise to some doubt and difficulty amongst different High Courts in computation of the retiral benefit. It is always an unequal struggle between the capital and labour and these cases furnish an instance where workmen after putting in long and meritorious service for over 30 years or more have been driven from one Court to another for the last 12 years due to the reason that the words "fifteen days' wages" occurring in Sub-sec.(2) of S.4 of the Act were susceptible of two possible conflicting constructions. In a situation like this the Government should have intervened at once to introduce a Bill for inserting an appropriate provision in the Act specifying the mode of calculating the rate of wages last drawn by such employees for the purpose of determining the rate of "fifteen days' wages" under Sub-s.(2) of S.4 of the Act.

18. In retrospect we wish to impress upon the Government that whenever such doubt or difficulty is expressed by the High Courts in the application of provisions of social security measures, *viz.*, retiral benefits, gratuity, provident fund and pension and the like, they must always introduce legislation to cure the defect rather than wait for judicial interpretation by the highest Court. We may also add that the Government may consider the desirability of setting up a National Labour Commission which may be entrusted not only with the task of making periodical review of such social welfare legislations from time to time but also to suggest radical reform of the laws relating to industrial relations which must be brought in tune with the changing needs of the society.

19. In the result, the appeals as well as the special leave petitions must fail and are dismissed with costs throughout. The costs are quantified at the sum of Rs.10,000/-, two-thirds of which shall be deposited with the Supreme Court Legal Aid Committee of which Shri Subba Rao is the Hony. Secretary and the remaining one-third shall be paid to the respondent.

..... *Appeals dismissed.*

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Present:- *O.Chinnappa Reddy and R.B. Misra, JJ.*

*C.A.No.693 of 1971 *5th February,1985.*
Mohammad Ghouse Sahib and others. *Appellants**
v.
Muhammad Kuthubudin Sahib and others. *Respondents.*

Civil Procedure Code (V of 1908), Section 92 - Suit under - Filed prior to the passing of the Wakf Act (XXIX of 1954) - Decree framing scheme passed after enforcement of the Wakf Act not void and unenforceable.

Appeal was dismissed against an order overruling the defendants' objection in execution proceedings. The objection was that though the suit under Section 92,Civil Procedure Code was filed before the passing of the Wakf Act, the decree had been passed only subsequent to the coming into force by the Act and was therefore void.

K.Ram Kumar, Mrs.J.Ramachandran and *K.Ram Mohan*, for Appellants.
A.T.M.Sampath, for Respondents.

The Judgment of the Court was delivered

Chinnappa Reddy, J.:- The defendants who had filed in a suit brought under Section 92, C.P.C., are the appellants in this appeal: This appeal however is not against the decree passed in the suit under S.92, C.P.C., but is directed against the order overruling the defendants' objections in execution proceedings. The objection was that though the suit under S.92, C.P.C., was filed before the passing of the Wakf Act, the decree had been passed subsequent to the coming into force of the Act and was, therefore, void. We see no force in the objection raised by the defendants. It is true that while the Wakf Act came into force in the State of Tamil Nadu in 1956 the decree framing the scheme for the Wakf was passed in 1961, but that does not render the decree void and unenforceable. As we said, this suit had been instituted prior to the coming into force of the Wakf Act. Section 55 of the Wakf Act shows that suits under S.92, C.P.C., continue to be maintainable even after the passing of the Act, except that the consent of the Board has to be obtained for the institution of such a suit if the suit is filed by some person other than the Board. Section 57(1), provides that in every suit or proceeding relating to title to wakf property or the right of a mutawalli, the Court shall issue notice to the Board, at the cost of the party instituting such suit or proceeding. Section 57(3), however provides that in the absence of the notice under Sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board within one month of its coming to know of such suit or proceeding, applies to the Court in this behalf. Section 59, however provides that in any suit or proceeding in respect of Wakf or any Wakf property by or against a stranger to the Wakf or any other person, the Board may appear and plead as a party to the suit or proceeding. These provisions make it clear that a suit under S.92, C.P.C., instituted prior to the coming into force of the Wakf Act does not abate on the coming into force of the Act. On the other hand, the Court is required to issue notice of such a suit to the Board and in the absence of a notice it would be open to the Board to have the decree declared void within one month of the Board's knowledge of the decree. Nothing of this nature has been done. The decree passed in the suit under S.92, C.P.C., in 1961 has not been questioned by the Board all these years and we do not see how the defendants can possibly object to the execution of the decree now. The appeal is, therefore, dismissed with costs.

...... *Appeal dismissed.*

THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Present:- *O.Chinnappa Reddy and R.B. Misra, JJ.*

*C.A.No.651 of 1971 *5th February,1985.*

Union of India ..... *Appellant**
v.
M/s.Somasundaram Mills (P) Ltd. and another. ..... *Respondents.*

Civil Procedure Code (V of 1908), Section 13 - Debts due to the State entitled to priority over all other debts - Attachment by State prior to sale of property to a third party - State entitled to recover the sale proceeds from the third party.

It is a general principle of law that debts due to the State are entitled to priority over all other debts. If a decree-holder brings a judgment-debtor's property to sale and the sale - proceeds are lying in deposit in Court, the State may, even without prior attachment exercise its right to priority by making an application to the executing Court for payment out. If however, the State does not choose to apply to the Court for payment of its dues from the amount lying in deposit in the Court, but allows the amount to be taken away by some other attaching decree-holder, the State cannot thereafter make an application for payment of its dues from the sale proceeds since there is no amount left with the Court to be paid to the State. However,

if the State had already effected an attachment of the property which was sold even before the sale, the State would be entitled to recover the sale proceeds from whoever has received the amount from the Court by filing a suit. Section 73(3) read with Section 73(2), Civil Procedure Code contemplates such a relief being granted in a suit. *[Para 1]*

Cases referred to:-

Manickam Chettiar v. Income-tax Officer, (1938)1 M.L.J. 351 : I.L.R.(1938) Mad.744: 6 I.T.R.180 : A.I.R. 1938 Mad. 360 (F.B.); Zumberlal Chhotelal Agarwal v. Sitaram, A.I.R. 1937 Nag.80.

B.B.Ahuja and *Miss.A.Subhashini*, for Appellant.

The Judgment of the Court was delivered by

Chinnappa Reddy, J.:- The Union of India is the appellant before us. In respect of Income Tax due from the respondents Nos.1 and 2 for several years, certificates under S.46(2) of the Income Tax Act were issued to the Collector of Coimbatore for the recovery of the tax as arrears under the Revenue Recovery Act. In his turn the Collector issued prohibitory orders on March 30, 1957 against the transfer of shares owned by the defaulting assessees in Kaleeswar Mills Ltd., and, further, on June 29, 1957, directed the Tahsildar to take immediate action to seize the attached shares and sell them by public auction. The Tahsildar however did not take any action in the matter. The third respondent, a creditor of respondents Nos.1 and 2, meanwhile, obtained a simple money decree against the respondents Nos.1 & 2, attached their shares in Kaleeswar Mills Ltd., and brought them to sale. The shares were sold on several dates in December, 1958. We may mention here that the attachment by the decree-holder was itself subsequent to the prohibitory order by the Collector. As we said earlier the Tahsildar really slept over the matter and it was in 1961 that he woke up and thereafter a suit was filed by the Union of India to recover the sum of Rs.20,245/- which had been taken away by the third respondent out of the sale proceeds towards his decree. The suit was resisted by the third respondent. The Trial Court decreed the suit, but the judgment of the Trial Court was reversed by the High Court, which dismissed the suit. Hence, this appeal. The simple submission of the learned counsel for the appellant was that the State had a priority over other creditors and that the attachment by the Collector being earlier in point of time than the attachment by the Executing Court, the Union of India was entitled to recover the sale proceeds from the third respondent who had taken away the amount. The High Court appears to have thought that the Government could exercise its claim to priority only if the amount was still available with the Executing Court and not otherwise. In the present case, the High Court thought, as the amount had already been taken away by the third respondent, the Government could no longer exercise its right to priority. It is difficult to agree with this proposition. It is a general principle of law that debts due to the State are entitled to priority over all other debts. If a decree-holder brings a judgment-debtor's property to sale and the sale-proceeds are lying in deposit in Court, the State may, even without prior attachment exercise its right to priority by making an application to the Executing Court for payment out. If, however, the State does not choose to apply to the Court for payment of its dues from the amount lying in deposit in the Court, but allows the amount to be taken away by some other attaching decree-holder, the State cannot thereafter make an application for payment of its dues from the sale proceeds since there is no amount left with the Court to be paid to the State. However, if the State had already effected an attachment of the property which was sold even before its sale, the State would be entitled to recover the sale proceeds from whoever has received the amount from the Court by filing a suit. S.73(3) read with 73(2) C.P.C., contemplates such a relief being granted in a suit.

The High Court relied on the decision of the Madras High Court in *Manickam Chettiar v. Income-tax Officer, Madura, (1938)1 M.L.J.351 : I.L.R.(1938) Mad.744: A.I.R.1938 Mad.360 : 6 I.T.R.180 (F.B.),* as supporting its conclusion. We, however, find nothing in the decision which supports the case of the respondent. What was decided in that case was that it was not necessary for the Crown to have obtained a decree before it could apply to the Court for payment out of amounts brought to Court by the sale of property in execution of a simple money decree obtained by some other attaching decree-holder. We fail to see how that case can possibly help the respondent. As pointed out by Vivian Bose, J., in *Zumberlal Chhotelal Agarwal v. Sitaram, A.I.R. 1937 Nag. 80,* the prior attachment fastens itself to the proceeds of a sale pursuant to the later attachment. The prior attachment effected by the State similarly fastens itself to sale proceeds taken away by the decree-holder. The State is, therefore, entitled to recover the amount from the decree-holder who has taken away the amount. The result, therefore, is the appeal is allowed. The judgment of the High Court is set aside and that of the Trial Court is restored. No costs.

..... *Appeal allowed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction)

Present:- *A.P.Sen and R.B.Misra, JJ.*

*C.A.No.2118 of 1978 *25th September, 1984.*

Ayyaswami Gounder and others. *Appellants**

v.

Munnuswamy Gounder and others. *Respondents.*

(A) Easements Act (V of 1882), Section 8 - Right of easement not pleaded by the plaintiffs - Effect - Plaintiffs claiming their right on the basis of co-ownership rights - They are entitled to so claim.

In the absence of any specific pleading regarding prejudice or detriment to the defendants-respondents, the plaintiffs have every right to use the common land and the common channel. The plaintiffs-appellants were claiming their right on the basis of admitted co-ownership rights which includes unrestricted user, unlimited in point of disposition. The right of co-ownership presupposes a bundle of rights. *[Para 10]*

Illustration (c) to Section 8 of the Indian Easements Act applies where a co-owner seeks to impose an easementary right on the land or any part thereof. In the instant case, however, the plaintiffs claim easementary right only as an alternative ground, but the main ground on which they based their claim is on the right of co-ownership. *[Para 12]*

(B) Precedents - Single Judge not agreeing with earlier decision of single Judge of same High Court - Should refer matter to larger bench - Judicial propriety or decorum did not warrant holding contrary to the decision.

Cases referred to:-

Subbiah Goundan v. Ramaswamy Goundan, A.I.R.1973 Mad.42; Sivarama Pillai v. Marichami Pillai, (1970)1 M.L.J. 376 : A.I.R. 1971 Mad. 230.

The Judgment of the Court was delivered by

Misra, J.:- The present appeal of the plaintiff-appellants by special leave is directed against the judgment of the High Court dated 7th April, 1978 reversing the judgment and decree of the two Courts below and dismissing the suit.

2. The appellants filed a suit for declaration of their right to take water from their exclusive well marked W.1 in the site plan attached with the plaint and situate in a plot of land exclusively belonging to them, though a portion of

a channel to their plots at survey Nos.95 and 96 lying to the north of the common well W.2 in the joint land of the parties and for a consequential relief of permanent injunction restraining the defendants-respondents from interfering with the enjoyment of the plaintiffs' right to take water from W.1 through the aforesaid channel.

3. The parties are descendants from a common ancestor and they owned joint properties. A partition took place between the parties in or about 1927 whereunder survey Nos.95 and 96 fell to the share of the plaintiffs and 15 cents of land in plot No.96/5 in which the common well W.2 is situate and the channel running from that common well were, however, kept joint for the common enjoyment of the parties. Water from well W.2 situate in plot No.96/5 was not sufficient enough to irrigate the lands of both the parties got by them in the said partition. The plaintiffs, therefore were irrigating their lands from the well in survey No. 103/2 purchased by the father of the plaintiffs in 1928 in the name of plaintiffs' mother under Ext.A.1 and they were irrigating their land obtained in partition through the common channel from their own well in survey No.103/2 by connecting the common channel in the common land in survey No.96/5 by means of a small channel to take water to their lands in survey Nos.96/3, 96/1, 95 and 92. The defendants objected to the use of the common land in survey No.96/5 and the common channel running in survey No.96/5 for taking water from their exclusive well in survey No.103/2. Hence, the plaintiffs were obliged to file the suit mentioned above.

4. The defendants admitted the plaintiffs' right to enjoy the common well, the common land and the common channel in survey No.96/5. They, however, pleaded that the plaintiffs were not entitled to use the common property for taking water from their exclusive well in survey No.103/2 to their family lands north of the common well. They also disputed the existence of the channel from 1928 as pleaded by the plaintiffs and further contended that the plaintiffs could not acquire any easementary rights over the common land to take water from their exclusive well. They, however, did not plead or prove any damage, injury or hardship suffered by the defendants to show that they were in any way prejudiced by plaintiffs forming a small channel in the common land to take water from their exclusive well to their family lands north of the suit property.

5. The trial Court by its judgment dated 16th June, 1973 found that the plaintiffs being co-owners of the common property were entitled to use the property in the way most advantageous to them and the defendants having not pleaded or proved any damage or loss to the common property cannot obstruct the plaintiffs from taking water to their lands from their exclusive well through the common channel. It will be relevant at this stage to quote the observations of the trial Court:

> "Except asserting that it will affect him, D.W.1 is not able to specify in what way the act of the plaintiffs caused damage or inconvenience to him in exercising his right in taking water through the common channel. All that he would say is that the plaintiffs should not have a channel AB on the common piece of land."

The trial Court, however, did not record any finding on the prescriptive right of easement pleaded by the plaintiffs; in view of its finding that the plaintiffs being co-owners can use the common land to form a channel.

6. On appeal by the defendants, the first appellate Court by its judgment dated 16th July, 1974 substantially concurred with all the findings of the trial Court. But, to avoid any complaint or prejudice which the defendants may complain of, though nothing was pleaded or proved, the learned Judge thought it fit to modify the decree of the trial Court by fixing terms for the plaintiffs' use of the channel. With this little modification the first Appellate Court confirmed the decree of the trial Court.

7. The defendants feeling aggrieved took up the matter in second appeal and the High Court by its judgment dated 12th of June, 1978 reversed the judgments and decrees of the two Courts below and dismissed the suit holding that the plaintiffs did not acquire any right either by grant or by prescription by way of easement. The High Court, however, found that the plaintiffs by taking water from their exclusive well through the common channel would be throwing additional burden on the common channel and common land which was not and could not have been intended by the parties at the time of the partition when they kept their well W.2 and the lands situated around it and the common channel for the common enjoyment of the parties.

8. The plaintiffs-appellants have now approached this Court and reiterated the same arguments as advanced by them in the two Courts below.

9. The learned counsel for the appellants strenuously contended that in the absence of any specific plea regarding prejudice to the defendants by the use of the common land and the common channel the High Court was not justified in recording a finding that additional burden to the prejudice of the defendants would be put on the common land and the common channel and that this could never have been intended by the parties at the time of the partition.

10. We find considerable force in this contention. In the absence of any specific pleading regarding prejudice or detriment to the defendants-respondents the plaintiffs have every right to use the common land and the common channel. The plaintiffs-appellants were claiming their right on the basis of admitted co-ownership rights which includes unrestricted user, unlimited in point of disposition, and the High Court was not justified in holding that the plaintiffs' right to take water was not acquired by any grant from the defendants-respondents or from any other sale deed. The right of co-ownership presupposes a bundle of rights which has been lost sight of by the High Court.

11. The only restriction put by law on the common user of land by a co-owner is that it should not be so used as to prejudicially affect or put the other co-owner to a detriment.

12. It was further contended that the Illustration (c) to S.8 of the Indian Easements Act relied upon by the High Court had no application to the facts of the present case inasmuch as the plaintiffs' case mainly hinges upon their right as co-owners and not on the basis of prescription by easementary right. Illustration (c) to S.8 of the Indian Easements Act applies where a co-owner seeks to impose an easementary right on the land or any part thereof. In the instant case, however, the plaintiffs claim easementary right only as an alternative ground, but the main ground on which they based their claim is on the right of co-ownership.

13. The plaintiffs cited the case of *Subbiah Goundan v. Ramaswamy Goundan, A.I.R. 1973 Mad. 42 (at p.45)*, before the High Court. In a similar situation it observed:

> "In the instant case, the defendants make use of the common channel for taking water from their exclusive well in S.No.24 only during their turn of enjoyment of the common well. Such use of the common channel, by no stretch of reason can be said to interfere with the right of the plaintiff in any way. Nor can it be said that the said user of the channel by the defendants would in any way damage or weaken the channel. Unless the plaintiff proves that such use by the defendants in any way interferes with his rights or that the common channel is being or is likely to be damaged or injured or weakened he cannot prevent the defendants from making use of the channel during their turn of enjoyment of the common well by taking water from their exclusive well also, which is most advantageous and beneficial from their point of view."

If the learned single Judge did not agree with that decision he should have referred the matter to a larger Bench and the judicial propriety or decorum did not

warrant holding contrary to the decision of the same High Court by him.

14. The defendants indeed are adopting a 'dog in the manager' policy. Although, they do not stand to be prejudiced or put to any detriment on their own pleadings, they seek to prevent the plaintiffs from irrigating their lands through the common channel from their exclusive well. There is no other source of irrigation for the plaintiffs..

15. Counsel for the defendants-respondents on the other hand contended that the well W.1 was built after partition by the plaintiffs on their exclusive land and, therefore, no additional burden could be put by the plaintiffs on the common channel and if the plaintiffs acquired new land then they cannot have any right to irrigate from the common well or channel. It was also contended that no proof of damage or prejudice was necessary. In support of their contention they relied upon the decision of the Madras High Court in *Sivarama Pillai v. Marichami Pillai, (1970)1 M.L.J. 376 : A.I.R.1971 Mad. 230.* In that case it was a common ground that as an integral part of the partition arrangement, both the branches' would have equal right to take water from the well and that right should be worked out by the plaintiff taking water from the well for three days and the defendants in the next three days thereafter. That case was decided on the basis of the terms of agreement at the time of partition. It is in the setting of the facts of that case that the High Court observed:

> "In the nature of things, a well cannot be divided by metes and bounds and persons who own joint rights in a well (to the right of the water in the well) can enjoy that right either jointly or separately only by resort to a workable arrangement safeguarding and securing the right to irrigate the lands allotted to the respective branches..... It is implicit in such arrangements that the common source of irrigation, the well, is kept in common for the only purpose of irrigating the lands which are allotted to the respective branches and to serve that purpose only, leaving out of account the other incidental purposes like bathing, washing clothes, taking water for cattle, etc. The scheme of the arrangement cannot admit of any notion of the parties being entitled to the particular quantity of water (so many gallons) treating that alone as a distinct item of property divorced from the lands. The well is set apart as common property for the most beneficial and profitable enjoyment of the land and it does not matter what the label the parties give to their rights in the well, whether it is a right to a particular share in the well or whether a right to take water by turns. But what is crucial is that in the case of lands, valuable right is the source of irrigation."

This case is distinguishable on facts inasmuch as in that case at the time of partition the well was kept joint and arrangements had been entered into about the mode of use of the well fixing the duration. If the parties had entered into a contract then they would be governed by the terms of the contract but in the case in hand there was no such stipulation about the manner or mode of enjoyment of the common well and the common channel.

16. There is yet another reason why we would be reluctant to encourage the defendants to stop the plaintiffs from irrigating their fields from their own exclusive well through the common channel. In these days of scarcity when every effort is being made at all levels to increase the agricultural production to feed the country's teeming millions it would not be desirable to allow the defendants to create any hurdle in the irrigation of the plaintiffs' plots through the common channel from their exclusive well. Thus, neither the law nor expediency warrants a conclusion as desired by the defendants.

17. For the foregoing discussion the appeal must succeed. It is accordingly allowed and the judgment and decree of the High Court is set aside and the one passed by the first appellate Court is restored in order to avoid any likely prejudice to the defendants-respondents. In the circumstances of the case the parties shall bear their own costs.

******** *Appeal allowed.*